Mr. Jauregui:

Q. Normally when the patient sends you the bill, if that is the only information you have, do you send the check to the patient or the doctor? A. No, it is like any other insurance organization. The man has to show that he is entitled to the service.

Q. I understand that. A. Yes. There are many stipulations in the contract in which people are not entitled to service.

Q. Do you get many cases where either the doctor sends you the bill or the patient sends you the bill where you find that he is not covered by your contract? A. Yes, yes.

Q. And a doctor who tries to cooperate with you, and a man comes in and says, "I am covered by Industrial," and the doctor says, "Fine; that is a good organization," and he gives him the treatment, and sends you the bill, and then you find the patient is not covered, that is the end of it as far as you are concerned? A. Well, if the doctor was cooperating with us, before he went ahead with
103 any extensive medical treatment he certainly would want to find out whether this patient was entitled to this service.

Q. You would not expect if a man came into a doctor's office saying, "I have got a bad stomachache; I am with the Industrial," the doctor to say, "Well, come back tomorrow, and I will see if I can give you some pills"?

Mr. Marcus: Your Honor, I object again on the ground it is utterly irrelevant to this case. These questions again merely relate to types of operation of these associations, and it is our position again, your Honor, and in this we are supported in the cases decided in the District of Columbia, that that sort of matter is irrelevant, if these defendants, as we have charged, have combined and conspired to restrict the competition of these associations.

The Court: Overruled. What are the types of situations you do not cover? Summarize that for me. You don't, of course, cover cases that come under the State Industrial Accident Commission, do you? A. We do, yes. Sometimes we do. Sometimes we have a subcontract under the state. We often times have a subcontract under the state, and furnish the same service that the state is supposed to furnish, under a subcontract.

The Court: And you do also what might be called
104 just general health insurance, I suppose? A. Yes. It is really a prepaid insurance, is what it is.

The Court: Yes, covering the whole health field. A. Covering the whole health field with certain exemptions in the contract. Now, my general manager, of course, handles all of that matter. It doesn't come before me. I am sure that he could give you every detail of that contract.

The Court: Yes. It is broader in that respect than when you started out? A. Yes, the contract has been broadened out and changed, as I have said, over the process of all these years, altered and changed to fit into the service as best we can furnish it for the money we get.

The Court: Yes. It has been greatly broadened? A. Greatly broadened, yes.

Mr. Jaureguy:

Q. Now, to get back to our hypothetical patient, we have a patient who has received a bill from a doctor which sets forth something about what it was about, so that you can tell what it was about. Then if you find that the patient is covered, you send the patient a bill? A. Send the patient a what?

Q. I mean send the patient a check. Now, in what way does that hamper you in your operations? A. In what way does it what?

105 Q. In what way does it hamper you in your operations if you send the check to the patient rather than to the doctor?

Mr. Marcus: I wonder if Mr. Jaureguy would mind asking Dr. Moore if he knows. I understood him to say his general manager attends primarily to the business details.

Mr. Jaureguy: Yes; but I remember you asked some questions about if he was hampered, so I think I have a right, if for no other reason, to ask the Doctor why he was hampered.

Q. I asked, how does that hamper the organization to pay the check to the patient rather than to the doctor? A. Well, if you could understand that running a hospital association with thousands of people, anything that is done to make, to block the easy accessibility of that man, anything that is done to hamper him in being able to go out and procure the services of a doctor would naturally hamper the business organization that gives out that service; and so everything that is—every time a doctor refuses to accept a check from us for services, and then the man himself has to—we have to send the check to the man—it entails a great deal of excess work in our office, and it entails a great deal of work on the outside.

For instance, I will give you an example. We have a certain company, and their people are not well taken care of by the local doctors. They will render the service, but they won't take the checks. And the man gets the
106 bill and he is a little put out about it, so he comes to the company.

Q. He gets the bill and what? A. He gets the bill. He thinks the bill should be sent to us, because other organizations do it that way. Our competitors do. So he takes the bill to the office, the employer, or he takes it to his union head. Now, in order to make it easy for us to operate and to not have trouble we have to put a cash fund at the disposal of someone in that company, and we have to make a deposit of cash and put it there so that as these bills came in, in order to keep that contract and not have a lot of trouble, this person who had the money could immediately check up the case and hand the man back his money on the bill.

Q. And where is that? A. Where is that?

Q. Yes. A. One example of where that is done?

Q. Yes. A. That is done at Hillsboro.

Q. Hillsboro? A. Yes.

Q. Well, do you know of any other type of indemnity insurance where the insured is not the one to get the payment from the insurance company? A. Oh, I am not very familiar—

107 Mr. Marcus: I object to that, your Honor, to that question. It is entirely irrelevant to this case.

The Court: He may answer. A. I am not—

The Court: Do you use slips like the National does?

A. What?

The Court: Do you use slips like the National does?

Mr. Jaureguy: Tickets, I think he calls them.

The Court: Tickets. A. Every person who goes for service has to have the tickets, yes. Every person who goes for service has to have a ticket as given out by the person who is in charge at that particular company. The person applies, says, "I want to go to the doctor," and they get a ticket to go to the doctor.

Mr. Jaureguy:

Q. But, now, to get back to the question before, do you know of any other type of indemnity insurance where the insurance company pays anybody but the

insured? A. Well, I am not very familiar with all the various types of insurance. I just know something about it, but I am not particularly familiar with the various methods of how they operate.

Q. And so your answer is No, I take it? A. I would probably say no—I probably could—I would have to say No, yes.

108 Q. Now, if a doctor has a standard of fees higher than the schedule of the Industrial—some of them do, you know,—and he sends you a check, do you know what his method is, what method he should follow to be paid his full bill? Would he send you a bill for part, and the rest to the patient? Would that be the way you would handle it? A. Let me see if I understand you You say if a doctor would send me a bill—is that it?

Q. Well, that is part of it, but I think maybe you have it right—you haven't got the whole picture. I suppose you recognize—of course, you do, Dr. Moore—that some stomachaches take more treatment than other stomachaches? A. Some patients require more treatment than others?

Q. Yes. And some fractures involve more work than other fractures of the same type. You recognize that, of course? A. I do.

Q. And that some doctors don't have a set fee per stomachache or per call or per fracture, but they take into consideration the facts in the case; that is correct, isn't it? A. Yes, all doctors differ.

Q. Yes. Now, what I am getting at is this: Suppose a doctor does some work for a patient, and his bill is $100, but your reimbursement is only $50. Now, how does he handle it in order to collect his $100 and still his patient get the $50? A. How would he handle it?

109 Mr. Marcus: Well, how is Dr. Moore in a position to answer that question? We are going pretty far afield, your Honor.

Mr. Jauregui: He has been practicing for forty-five years as a medical man, both as a doctor and as an insurer.

A. I don't know how he would handle it. One man might one way and another might another way.

Q. That is his problem? A. Yes, that is his problem?

Q. Well, would you think that if he sent you a bill for half and a bill to the patient for the other half that it might kind of strain the doctor-patient relationship?

Mr. Marcus: Well, your Honor, I object again, these

hypothetical questions. He is not a doctor who has treated a patient and sent in a bill. How can he put himself in that doctor's position?

Mr. Jaureguy: He has dealt with a lot of patients, however very capably too.

The Court: Read the question.

(Pending question read)

Mr. Marcus: Well, your Honor, I object—

The Court: Don't object—

Mr. Marcus: That calls for—

The Court: Now, look, Mr. Marcus, you and I are not going to get along at all if you keep objecting. I am
110 making all my rulings subject to the objection. Did you hear the question, Dr. Moore?

A. I did. And I can only say, if our organization sent him the full fee, if we sent him the fee he was entitled to, just what the patient's feeling might be or what the doctor's feeling might be I wouldn't know.

Mr. Jaureguy:

Q. You don't mean the full fee that he is entitled to? A. I say, the fee that the organization was entitled to pay him.

Q. That is right. A. Yes.

Q. You will recognize, I take it, Doctor—I know you will—that sometimes a doctor renders services to a patient where he really is entitled as a matter of justice to something more than your schedule? A. Yes.

Q. You recognize that, don't you? A. Yes.

Q. Surely. And that is the type of case I am talking about. A. I have had occasion many times to have a doctor write us a letter and explain these details of how a certain fee on our schedule said so and so, and the man put down in detail the extra things that happened in that case and stated to me or stated to the organization and
111 they submitted it to me for my medical opinion, and I said to them, "I think this man is entitled to more than this schedule and pay it to him."

Q. That is usually a case where he has done other things than set the particular fracture? A. No, just where he has had a lot of complications in the case. We haven't been coldblooded in holding a doctor down to just exactly what that fee says. We try to be human about the matter, and we try to give him what he is entitled to.

Q. I don't question that, but nevertheless you will agree with me that there are a lot of doctors who charge more, and their charges are reasonable? You will take the stand and testify they were reasonable if you were called in, and yet it is above your schedule, and you wouldn't pay as much as they are charging? There are lots of cases of that? A. I think there have been many cases where we think the patient, the doctor has charged more than the schedule, and sometimes, as I say, we have paid them, and other times—I think our adjusters in the office have adjusted it on a basis of what we thought the patient was entitled to receive under his contract.

Q. Yes. A. And they would pay him on his contract.

Q. And then the doctor would collect the balance
112 from the patient if he could, or do you ever follow it that far? A. Well, no.

Q. Now, as I understand it, the objection to having the patient send in the bill and getting the check is that the patient gets impatient about the length of time it takes him to get the check? A. I don't think the working of prepaid insurance is as harmonious where we have to break conditions down and don't get the cooperation of the physicians who are attending our patients. However, under the insurance plan we, now as it is developed now, we just stipulate we will pay so much if your doctor will give us an itemized bill and if you are entitled to that we will pay you the full amount of your bill as it is stipulated in the contract and we will pay your hospital bill.

Q. Well, I am glad to get that, because I am not sure I understood it, but I don't think it is in answer to my question. My question is whether or not your objection to paying your member rather than the doctor is that the patient sometimes gets impatient about the delay in his being paid by you. A. Well, of course, all delays that are mad in the matter are bad, particularly where the patient pays the bill, which he often does. The patient often times himself will pay the bill and then submit it to us.

Q. And do you have some members that prefer to handle it that way, some of your members? A. No, I don't
113 think any of them do.

Q. You mean they all prefer to have the doctor send it in? A. No, it isn't always that the—I think it is the matter of the delay and cooperation, lack of cooperation by the doctor in explaining to the patient or making him pay. It isn't the fact—I think the patient would be perfectly willing if we could just go to work and have it understood

by the doctor that we would pay this patient so much, or we would give it to the doctor. Where we get the cooperation it all works harmoniously.

Q. It works harmoniously even though the patient sends in the bill and gets the check? A. I didn't quite get it.

Q. I say, under those circumstances it is harmonious, even though the patient gets the bill? A. If the patient gets the bill?

Q. And you send the check to the patient? A. Well, I don't know how harmonious with the patient it would be where he is given the bill. I know as a general rule most of these men in the industries don't like to receive the bill themselves because they think they have to pay it right away themselves, and so I don't think they like it. I think they think they have got to pay it right away.

Q. You mean it is customary for patients to pay their doctors promptly? A. A good many of these cases
114 where this occurs, it mostly occurs by men who don't want to cooperate with us, and it has caused embarrassment.

Q. But in cases where it is done by men who are willing to cooperate with you, why, then it is all right? A. Well, as a general rule the doctor who is the physician and if he knows the whole situation and knows all about this work, he explains to the patient how this all occurs, and the patient is perfectly satisfied as a general rule under those conditions, and the doctor will mail us the itemized bill, and we will send him the check, of course.

Q. Yes, of course, but that is getting away from the questions I am asking you. What I am saying now is, that if a doctor cooperates with you by giving the patient an itemized bill that fully covers it so that you can tell whether the patient is covered, and the patient sends the bill to you and you pay the patient; that is all right, isn't it? A. Yes, that is all right, if the patient—if the doctor gave him the bill and he brought the bill to us and the bill was okeh and we would give the man the money.

Q. And that doesn't embarrass you in your— A. No, we get along under those conditions.

Q. So that there are plenty of cases where the bill is sent in by the patient and you pay the patient? A.
115 Yes.

Q. And it doesn't in any way embarrass you or hamper you? A. No, we have cases, many of them that occur just that way.

Q. So it is just a portion of the cases where the doctor doesn't send in your bill, but the bill is sent in by your patient that embarrass you? A. Yes.

Q. Yes. And you couldn't tell us what portion then? A. No, I can't answer that question.

Q. I am sorry I haven't had a chance to read all the exhibits here that the Government has got marked, but did you ever send a general letter out to all doctors telling them that you would like to have them send in their bills to you rather than to have them give it to patients, or do you know? A. What is that?

Q. Did you ever send a letter out to the doctors generally— A. Well, now, I can't answer that question, but my manager can, my manager could answer that question.

Q. Now, I don't know whether you have given us the full benefit of your experience in the matter on what I will call the dilemma of the doctor who wants to cooperate with you, but still feels he should charge the patient more than your schedule? A. I think there are doctors who want to charge more than the schedule, yes.

116 Mr. Marcus: Your Honor, may I have the record show that we do have an objection to this line of questioning?

The Court: Yes.

Mr. Jaureguy:

Q. And you will agree that a lot of doctors have reached that stage in experience and skill where they are entitled to more than your schedule, many times, not always, but many times? A. I think there are many men who feel they are entitled to more.

Q. Well, that is interesting information, but it isn't the question I asked. I asked whether you don't think that there are doctors who in some instances are entitled to more than your schedule?

Mr. Marcus: Well, your Honor, may I ask for a ruling on this type of questioning? We object on the ground that it is irrelevant, they call for an opinion, and they are not connected with this case.

The Court: I have been giving you rulings all afternoon. The objection is overruled.

Mr. Jaureguy:

Q. Now you have given us everything you can as to how that doctor can handle it so as not to antagonize the

patient and also cooperate with you? A. The question was what?

The Court: Read it.

(Last question read)

117 A. You say that I have given you that?

Mr. Jaureguy:

Q. I ask you that. There should have been a question mark there. A. That questions says, you said to me, "And you have given that"—

Q. Yes; but at the end there is a question mark. A. Now, wait a minute. You answered it yourself by saying "And I have given that".

Q. But I put a question mark there. I will put it this way: You have given us, have you not, all the benefit you can— A. What?

Q. All the information you can of solving the dilemma of the doctor— A. Well, I have given you the best I know how to do it and generally fairly so far as you have asked me any questions.

Q. And I want to know if there is anything further you can add as to how this doctor could get out of this dilemma? A. Of wanting more money?

Q. Of charging more than your schedule in cases and still not antagonize the patient? A. I don't know.

Q. Yes. A. That is the doctor's problem.

Q. I understand. Pretty tough problem too, isn't it, sometimes?

The Court: It is 4:00 o'clock; 10 o'clock in the morning.

118 Court reconvened at 10:00 o'clock A.M., Wednesday, October 19, 1949.

Dr. Chester C. Moore, witness on behalf of Plaintiff, having been previously duly sworn, resumed the stand and further testified as follows:

Cross Examination (Continued)

By Mr. Jaureguy:

Q. Doctor, in addition to your work in connection with the Industrial Hospital Association, are you engaged in the private practice of medicine? A. To a very slight extent.

Q. To a very slight extent? A. Yes, just taking care of old friends. My principal work is acting as Medical Director for the organization.

Q. Has that been true since 1936 or— A. Oh, no.

Q. Have you found it necessary to— A. No, I worked very hard at the beginning of the organization of this hospital association. I carried a very heavy load and did for many years, in surgery.

Q. You specialized largely in surgery, in your private practice? A. My work, primarily. I am a surgeon, yes.

Q. In stating the charges that you will make or that doctors generally make for their private patients, there are several things taken into consideration, are there
119 not? A. I think that is generally accepted by the profession, yes, among doctors of the profession. I think many doctors have more or less a varying scale, but not an organization like the Industrial Hospital Association.

Q. I am just confining myself to private practice for the present. A. To private practice?

Q. Yes, to private practice. A. Yes.

Q. One of the things considered is the skill of the surgeon, isn't it? A. Well,—

Mr. Marcus: Your Honor, may I object again, as I did yesterday, with respect to this line of questioning on the ground of irrelevance and calling for a conclusion.

The Court: The objection is overruled.

Mr. Jaureguy:

Q. The skill of the doctor is taken into consideration in determining fees? A. It is as concerns patients. Skill means everything, as concerns the patient.

Q. Generally, a doctor who has been in practice for a period of years and gained skill is expected to get more for his services than a young man just admitted to practice? A. My experience has been that the best men, the men who are better men, the best men in the
120 profession as a general rule are not overchargers. I have found most of the overcharging is done by men who are not particularly really skilled men. I think most real, fine, high-class men are fair in their charges, particularly when they are dealing with people of the laboring class or earning class.

Q. If you were an expert witness on a fair charge for services paid a doctor, you would consider his skill and

the length of his experience, would you not? A. I think there is a different consideration given as an expert witness. I think that is entirely different.

Q. Is that so? A. I do, yes.

Q. I am not speaking of the fees paid an expert witness. A. I though that is what you were referring to.

Q. I am speaking, if you were an expert witness, testifying as to the reasonableness of charges of some other doctor— A. Yes.

Q. —you would take into consideration his skill and the length of his experience in determining what is a reasonable charge? A. Yes, if I were here as an expert witness and someone asked me about his qualifications, I would try and state them as best I can, as to what I knew about him.

Q. In determining what your testimony would be as to the reasonableness of his charges, you would take
121 into consideration his skill and the length of time he had practiced? A. I would have to give consideration, if I was asked to express an opinion.

Q. Yes. A. If I was asked to express an opinion as to what I thought his qualifications were in that particular line. Sometimes that is not necessarily years of experience. I have seen some of our most brilliant men who haven't had many years experience.

Q. At least skill and brilliance, then? A. The skill of the individual doctor.

Q. Yes. A. Yes.

Q. Also, where there might be a compound fracture of a given bone, one compound fracture requires more time and energy and skill than another compound fracture of the same bone. That is correct, isn't it? A. You say one does?

Q. One does, yes. A. You want me to answer that there is a difference in compound fractures?

Q. Yes, I am asking you if there is. A. There is a difference in compound fractures.

Q. So, any private doctor—in private practice a doctor naturally would charge more for a compound fracture of a given bone than in another instance, would
122 charge more than he would for a compound fracture of the same bone in another individual? A. Most of these matters are largely given consideration in arranging of a fee schedule by any insurance company.

Q. Then, also, it has been the established principle with doctors that one of the most important things to take

into consideration is the ability of the patient to pay? A. That is very largely true, and that is why we have always contended that we are dealing very largely with the laboring class of people—most of our insured people are the laboring class of people, and we feel the schedule of fees we have to charge, and that we have offered the doctors, is a very fair schedule for that class of people.

Q. Do you, at the present time, have any income limits? A. No, we have never based our care upon the income of the individual.

Q. If you go into a factory and draw up a contract, that contract will apply to the president and manager as well as the lowliest laboring man? A. Yes, as a general rule, our contracts cover all people in the industry.

Q. Does the Industrial Hospital Association cover any other state? A. It covers the entire state, the entire State of Oregon; it covers Washington; and it covers Northern California.

123 Q. Do you mean by that that there is not any town or city or village in Oregon where you do not have members? A. Well, we probably might have a few, but we have found that due to the trouble we have had with the Medical Society and the boycott that was placed upon us—

Q. I am not asking you for the reasons. A. I beg your pardon?

Q. I see Counsel getting up. A. Yes.

Mr. Jaureguy: I am entitled to have the witness answer the question that is asked.

Mr. Marcus: I think the witness has answered or is answering the question that was asked, rather.

Mr. Jaureguy:

Q. The question that is asked is whether you have members in every city, town and village in the State of Oregon? A. I think we could safely say that is almost true, that it spreads over the state pretty generally. There might be some village or place that we might not have one; but if there was, I wouldn't know it.

Q. And that has been true how long? Not ever since 1936? A. No. In 1936, as I think I told you yesterday, this organization started—this organization started primarily to take care of the lumber industry and it was confined primarily to the lumber industry. Then it gradually was enlarged and, through the process of evolutionary
124 development, it began to spread gradually over the States of Oregon and Washington.

Q. Do you think competition in your field of business helps it or hurts it? A. I think competition is a very necessary thing in our business, as well as any other business; and when you say it hurts us, it depends upon the type of competition. Fair competition we are willing to meet and can meet gracefully. Unfair competition has been a great handicap to us, and that is what we have been up against.

Q. Your business has increased about three or four times in the last fourteen years? A. What?

Mr. Marcus: I object again to that question on the ground of irrelevance. As we understand the Sherman Act, it makes no difference if the activities of the defendant prevent a person against whom these activities are aimed from getting sometimes $10 profit, or if it is aimed against someone who suffers $10 loss of profit.

The Court: Overruled.

Mr. Jauréguy:

Q. Your business has increased three or four times? A. Yes, I think all prepaid medical insurance has increased over the last decade or so and, as the prepaid medical insurance has increased, is has increased with us equally like all other organizations.

125 Q. Yes. A. And it is becoming more popular all the time.

Q. Do you think the organization of the OPS has increased the popularity of prepaid insurance? A. I can't say that they have increased popularity of it. It existed in the State of Oregon before the OPS was started, and my personal opinion is that the organizations that were furnishing service in the State of Oregon had developed to a degree probably higher than any other state in the United States. I think we had a higher degree of development of prepaid insurance by our organization and by others in the state, equal to anything in the United States.

Q. I am not sure that I got your answer to the question. The question was whether you think the organization of OPS had increased the popularity of prepaid insurance? A. That is a difficult question to answer, as to whether it increased the popularity. I think they have done it some harm.

Q. Yes. In other words, you don't know the answer to my question? A. Yes; if I have to answer it, I would say they have not made it more popular; they have harmed it.

Q. You say you are a member of the American College of Surgeons? A. Yes, I am.

Q. And you have been for how long a time? A.
126 I had my degree of Fellow of the American College of Surgeons since about, I should judge, about 1921.

Q. You did not mean to say yesterday that you have been excluded from any scientific meetings in Portland. Have you? A. I have not. I would be humiliated if I were to attend any medical meeting sponsored by the local, city and county for the State Medical Society; having been treated as I was by them, I would not humiliate myself by attending one of their meetings.

Q. Have you ever been excluded from any scientific meetings? A. I had been expelled from the Medical Society or forced to resign.

Q. Have you ever been excluded from any scientific meetings? A. No; if I would want to smother my feelings, I could attend. I could walk into the ctiy and county medical society if I wanted to.

Q. That is what I asked you. A. I will quote one instance. In one instance I tried to go before the State Society, and then I had resigned from organized medicine, and when I was invited to go before the State Society both Dr. Pilkington and Dr. VanDusen, who were members, wanted me to explain why we were there.

I rose on my feet, at the request of Dr. VanDusen, and when I got up to talk Dr. Martzloff was sitting behind me, and there I received very great humiliation.

He got on the floor and stated to the chairman of
127 the meeting that he objected to my presence; he objected to my right to the floor; he objected to my having any say upon the floor, and told them some facts there, after which I was compelled to ask the chairman for the right of the floor and tell the chairman what the man said was a deliberate falsehood.

But it broke up the meeting, and it gives you an idea of the humiliation that I would have if I were to attempt to go before any meeting of either the local or State Society, and that is a good example of my humiliation.

Then, you ask me would I visit, would I go to a meeting?

Q. No, I didn't ask you that. A. You did. You asked me if I could go.

Q. Yes. A. I did go. That was the humiliation that I suffered by going.

Q. That was a scientific meeting, was it? A. That was a meeting of the—no, not a scientific meeting. It was

a meeting of the Council of the State Society, which— of which Dr. Hunt was Chairman and President.

Q. The Council? A. The Council of the State Society.

Q. I see. A. Yes.

Q. The Chair recognized you and permitted you to talk? A. After I had been humiliated by Dr. Martzloff, I finally asked permission of the Chair if I could
128 speak, and he granted me permission to speak.

Q. Did anybody try to humiliate you besides him? Maybe I had better step up a little. A. That is all right. I can talk louder.

Q. Do you recall whether anybody tried to humiliate you at that meeting besides Dr. Martzloff? A. No, no one tried to humiliate me except Dr. Martzloff. In fact, one of the women present, one of the councilors, who later became president of that Society, walked up to me, and went over to me and shook my hand and said she felt sorry for me, and she stated that she regretted that such things could happen within the hall of the State Society, or the Council. She regretted it.

Q. Weren't there others besides Dr. Kent also who felt that Dr. Martzloff was entirely out of order in what he did? A. I think there were many men there who themselves sympathized with me. I think many of the men there—I think many of the men in the Society are of a firm opinion that I had been dealt with harshly and very unjustly in this whole matter.

Q. Many of the members of the Council of the State Medical Society felt you were dealt with harshly and unjustly? A. I think so. I think there are many men on the Council—in fact, one of the men who was on the Council, he was a guest of mine, and he wanted to have a talk with me. We had not been in the house more than
129 just a short time and we went into a private room and he put his arm on my shoulder and he said to me, "Chet, I want you to know that I never knew of you doing an unethical thing in your life, and I don't believe you are unethical." He said, "I was at that Council meeting," but he said, "You are a victim of circumstances." I said to him, "Please tell me, what are those circumstances?" And I got no answer. I would like to know what those circumstances are.

Q. There are many members of the Council of the State Society, as I get it— A. Yes.

Q. that felt that it was improper for the Multnomah County Medical Society to expell you? A. There are

many members in the State and in the local Society who feel I had been dealt with unjustly in this whole matter.

Q. Particularly to the members of the Council of the State Society? A. Members of the Council, also.

Q. And Presidents of the State Society? A. What?

Q. Also Presidents of the State Society? A. Yes. One of the Presidents of the State Society fought during his whole period, while he was there, trying to get this matter straightened out, and get them to do something about my forced expulsion, and at the annual meeting he got up on the floor, and after finishing his term, he told the annual meeting that he thought that something should be done about the fact that myself and Dr. Sabin and some of the others, some of the other men, were no longer members of the local Society.

Q. What Dr. Watts with you? A. Yes.

Q. You knew Tom Watts? A. Yes. Tom Watts has been dead a long time now. He was a good friend of mine. Tom came to me one time, long before this thing started and said, "Chet, as a friend of yours, I want to give you some advice."

I said, "What do you want, Tom?" There never had been a word of this matter ever come up in the local Society or anywhere else.

He said, "Chet, I want you to do one thing for your own good."

"What is it, Tom?"

"I want you to resign from the city and county Medical Society," and I said, "Why, Tom, that is ridiculous. I never will resign." He wouldn't tell me why.

Q. But he was opposed to your being put out?

A. He wanted me to resign. He told me for my own protection to resign.

Q. For your own protection? A. What?

Q. He was opposed to the manner in which you were treated by the Multnomah County Medical Society? A. I had not been treated in any bad manner, because this matter had never come up.

Q. No, I mean when this thing did come up in 1936? A. After it did come up I never had a word of conversation—Tom Watts told me this long before the thing ever came up. He was a member of the Council at that time, and he told me this before it came up, so he must have had some inside knowledge as to my future and what was going to happen to me because I belonged to the hospital association—and I think that was the reason—and he advised me to resign.

Q. Did you ever talk to Dr. Massey? A. Who?

Q. Dr. Massey of Klamath Falls. Do you know him? A. No.

Q. You don't know him. And Dr. Sweeney, was he very much opposed to what the Multnomah County Medical Society was doing? A. You mean old Dr. Sweeney?

132 Q. Yes. A. I understand that he was, but personally I had no conversation with him that I can remember. But I understand that he didn't like the whole procedure. I was told that. Mr. Kirk told me.

Q. He was one of the cooperating physicians— A. He always, I think, handled our work for us, and he was very friendly to the organization. Down in the Medford district he took care of many patients for us.

Q. Was he the one who, when his term of office as president expired, condemned the action of the Multnomah County Medical Society that you were speaking about a few moments ago? A. No.

Q. Which one was it? A. Dr. Shea was the one.

Q. Dr. Shea? A. Dr. Shea. And at the time that Dr. Shea made this statement to the Society one of the members of the Society got up on the floor and tried to bring that question to an issue, and he was immediately squelched as being out of order.

Q. Are you talking of the president of the Multnomah County Society or the State Society? A. The Multnomah County Society.

Q. Now, about Banner Brooke? He was opposed

133 to it, too, wasn't he? A. Dr. Banner Brooke?

Q. Yes. A. Well, I can only explain Dr. Banner Brooke's situation by telling you of some happenings. I think that would explain his position. If I may tell you that, I will tell you that.

Q. Yes. A. Dr. Banner Brooke belonged to my golf club, and we played golf together in a foursome and were pretty good friends. But we never discussed anything about medicine or about hospital associations. There was a meeting to be held, and he, I think, was president of the local association. There was a meeting to be held by some doctors in Dr. Sears' office. Dr. Banner Brooke asked me if I would be present. I said Yes. And so I went to this meeting. At that meeting Dr. Sears, Dr. Fitzgibbon, Dr. Lamb, Dr. Banner Brooke, Dr. E. E. Gambee— a political clique that got control of the local Multnomah I forget just who else was at that meeting. That meeting was the first meeting; and that was the organization of

city and county medical society. I was there. I have never said anything about it. They got control.

And then if you will trace the history of the Multnomah County Medical Society, you will find that the president of the local City and County Medical Society was rotated.

I will name them again right down the line. They
134 were men that were at that meeting, and each one became president each year, and controlled that society. And the rank and file of the society didn't give a darn about what was going on, and they ran the whole show. The big manipulater of the whole thing was Dr. Martzloff. Dr. Sears was there, but they all became consecutively presidents until they ran out of numbers, and then they began to take in other men, like Dr. Shea, and men of that type who were of a better type. As far as I am concerned, they were fairer men.

Q. When the political clique ran out, then the expulsions from the Society stopped? A. They tried to stop it, yes. Dr. Shea tried to stop it. The secretary of the Society, of the local City and County, had to record and send out all the things that happened in the Society. He pleaded that they had to do something, and he could do nothing. And he finally said, "Gentlemen, I am going to resign. I can no longer sign my name as your secretary, and I am getting out, resigning."

Q. When this political clique finished up about 1940—A. It still controlled it.

Q. It still controlled it? A. It still controlled it. And they have enough members in their organization, enough delegates from Multnomah County, so that they can always pick one or two from outside the state who
135 probably will be rewarded with an office in the State Society, and by that method they have controlled the State Society. That has been a clique that has controlled this thing, and the rank and file of the medical profession—as I say, I have been very concerned, and I don't think that the rank and file of the medical association would ever approve what has been going on.

Q. The political clique didn't control Dr. Watts or Dr. Sweeney, did they? A. Dr. Watts, understand, was on the Council. I don't remember of Dr. Watts ever doing any friendly act for me, or I don't know—outside of speaking to me and advising me to resign. He was not a man who did any particular amount of work for the organization. I never knew him to refuse to do so. Dr. Sweeney, I think, was a man who stood his ground and refused to let the

Society tell him how he could treat his patients and how he could not treat his patients.

Q. He refused to let them tell him? A. He refused to let them dictate as to how he could treat his patients and how he could not treat his patients. So when our patients went to Dr. Sweeney he treated them fairly.

Q. Your patients went to Dr. Brooke, didn't they, Dr. Banner Brooke? A. Not very many. There might have been a patient occasionally who went to him, but I neglected to tell you that this crowd controlled the
136 medical association were very suspicious of Dr. Brooke, because he invited me to that meeting, and because he was my golfing pal, and they ditched him. They got him out of there pretty quick.

Q. This clique ditched him? A. They ditched him. He didn't function with them any longer. I think they were very suspicious of him. They thought he was a little bit too friendly with me.

Q. You think the political clique still governs? A. Yes, I do, I think they still control.

Q. Now, Doctors Pilkington and VanDusen up to the death of Dr. Pilkington, both of them practiced medicine in Astoria? A. They both practiced in Astoria.

Q. For many, many years? A. Yes, for many years.

Q. And they continued to be members of the Clatsop County Medical Society? A. The Clatsop County didn't take action against them.

Q. And they held offices in the Clatsop County Medical Society? A. I think Dr. Pilkington has held offices, but just when and what I don't know.

Q. And Dr. VanDusen? A. Dr. VanDusen likewise was an honored member of the profession there, and
137 no doubt has held office.

Q. He was president of the Society? A. I think so, probably, I think he may have been president.

Q. And they were elected as delegates to the state convention, or do you know that? A. I don't know for sure.

Q. I guess the political clique didn't take charge down in Astoria? A. I don't think they went very far in Astoria.

Q. Now, when you said what you did to Dr. Adams at the Council meeting— A. What?

Q. When you had that little conversation with Dr. Adams immediately after you had presented your resignation, you recall— A. Yes.

Q. —and he asked you as a favor not to make a statement to the press— A. Yes.

Q. —you expressed yourself rather emphatically— A. I did.

Q. —that you didn't think he had the right to ask you that favor? A. I though he had a lot of nerve to ask me.

138 Q. Then you did give a statement to the press, did you not? A. What?

Q. You did make a statement to the press then? A. No, I made no statement, I never went before the press.

Q. Did the press interview you? A. What?

Q. Did the press interview you? A. No, they didn't interview me.

Q. You spoke yesterday of a cooperative plan with certain county groups. A. That was a plan which was formulated by Mr. Kirk when he was manager. I only have a smattering of knowledge of it, but I knew that he tried at one time to arrange for this cooperative plan. I can't speak intelligently upon the details of it. I just tried to give you the general picture as I saw it. You understand that in an office like mine I have my own duties as medical director. My managers did not bring before me, and do not bring before me, the details of running an office. I get the generalized picture.

Q. I understand. A. But they don't give me the details. They relieve me of that burden.

Q. But the general plan of this cooperative plan would be, they would go into a county, and the doctors would enter into an agreement with the Industrial whereby the hospital bills and things of that kind were paid and

139 then the balance was split? A. As I understand it—I can't give you the details, but I know it was some sort of a cooperative plan by which the doctors themselves participated in any earnings other than the fee they got for the case. In other words, it was arranged so that if there was any over-amount that it could be disbursed back to the doctors who served the organization in that county.

Q. And, of course, if there was a deficit, they shared that with the Industrial? A. What?

Q. If there was a deficit they shared that with the Industrial? A. No, I think if there was a deficit that would have been upon our shoulders, and we would have had to stand the deficit.

Q. You are not sure of that? A. We have done so.

Q. Doesn't the Industrial take 32½ per cent generally, and the doctors 67½ per cent? A. I don't remember the division involved.

Q. Do you remember what counties you had the cooperative in? A. No, I don't. The only recollection I have is that I thought that Hillsboro, the county in which Hillsboro is, was one of the counties where this was proposed. But I know that it was a plan that he had, but I don't think it was ever carried out to any effect.

Q. You had that at Oregon City, too, didn't you? A. What?

140 Q. You had that for a time at Oregon City? A. You say we had it?

Q. Yes. A. For a time?

Q. Didn't you? A. I am not positive. I am not positive of that.

Q. About when was it that you had these cooperative plans? A. It dates back—I can't give you that either, I know it goes back quite a number of years. I know that Mr. Kirk was trying to formulate this cooperative plan, but I know it didn't succeed. Why, I don't know. I know it was never carried out, or carried forward to any degree, but just why, I don't know. As I say, those were details of management, business management, of which I had no definite knowledge.

Q. Would you say that was in the 30's or in the 40's? A. I would rather not try to make a guess.

Q. All right. Now, you say that the Industrial buys drugs and supplies from other states and brings them in here. A. The Industrial has a department, a drug department. It is just as complete a drug department as any drugstore. Doctors' supplies are purchased wherever it is necessary to go to purchase those supplies. That means first aid supplies of all kinds, belts, different things for injured people, all kinds of drugs—anything that a drugstore would carry.

Q. Most of those are used in connection with your first aid work, aren't they? A. They are all bought and

141 handled through the drug department of the Industrial Hospital Association.

Q. But, I say, most of them are used in connection with the first aid activities of the Industrial Hospital Association? A. No, not necessarily first aid. In the early days of the organization drugs were furnished, prescriptions were furnished the patients, and later on that was discontinued. But we didn't discontinue our drug department, and our drug department still exists today, and all of our patients—any patient who is under the Industrial Hospital Association has the privilege of going to the drugstore

and purchasing their drugs, having their prescriptions filled.

Q. In other words, the Industrial Hospital Association, among other things, has a drug department? A. Has a drug department.

Q. Yes. If they fill their prescriptions, they pay extra for that, don't they? A. They buy their own prescriptions.

Q. They buy their own prescriptions? A. Yes.

Q. So that your drug department is run a good deal like an ordinary drugstore? A. Run just the same as any drugstore, only it is run for the benefit of these subscribers.

Q. But when they come in, they come in and get
142 their prescription and they pay for it? A. Just the routine of procedure I can't give you, but I know that any doctor who prescribes for one of our patients can take the prescription and go to the drug department and have it filled.

Q. And pay for it? A. And pay for it, yes.

Q. Do you have these drug departments or drugstores at other places than in Portland? A. No, we only have one drug department connected with the Industrial Hospital Association.

Q. That is in Portland. Now, about your writing contracts in other states. In the old days—I say the old days, but it isn't so long ago—in the days when you were furnishing doctors' services as distinguished from your present plan of indemnity—you get that distinction, of course? A. Yes.

Q. —the State of Washington ruled that you could not carry on that activity in Washington, didn't they? A. I never remember of any ruling of that kind.

Q. You haven't read your minutes lately, I don't suppose. But do you remember that you were turned down in Washington back in the 30's? A. No, I don't remember that.

Q. And the same thing is true in California? A.
143 I know that can't be true largely, because—well, I will give you an example. Down at Cathlamet, Washington, Crown-Zellerbach operation came to us many years ago—over twenty years ago—and they had that big operation there, and they had no local doctor. We succeeded in getting a first-class young medical man to go down there and locate in the town to render service to those people, and he was paid—we paid him and arranged for his office, arranged to set him up there. He took charge of all their company work, as I say, for which we paid him. We pro-

vided him with an office, and then he became a private physician for all the local people there. And that man went there over twenty some odd years ago, and that man is the leading physician there and is still in that town and still doing our work there. So what you say cannot be true.

Q. You paid him for the services he rendered at that time? A. We paid him—well, there were different methods. He was on a salary, but just how that salary was computed at different times, I don't know.

144 Mr. Jaureguy:

Q. But you did not get the ruling from the departments in Olympia of your right to do that at that time, did you? A. I never remember of any ruling or anybody who interfered with our procedure down at Cathlamet. I never knew it was ever interfered with. He has his license to practice in the State of Washington.

Q. Yes. A. He has his office, he goes to the hospitals, he takes care of the people there, and I never knew he was ever interfered with by any ruling.

Q. No, I didn't say that. I didn't ask that. I asked you whether it isn't a fact that you didn't get a ruling at that time, but later you did get a ruling? A. I never knew of a ruling being issued.

Q. Then in California, too, you never went down there and sold prepaid medical care as distinguished from an indemnity contract, did you? A. Well, now, we have been in California.

Q. Yes. A. Understand?

Q. Since you have— A. We are operating there now.

Q. On your indemnity plan. A. How?

145 Q. On your indemnity. A. Now, when you get into the details of what kind of an insurance plan it is, what kind of a contract it is, then I will have to say I don't know because I am not acquainted with the details—

Q. Yes. A. —of the contracts, and that would have to come from my office force. I know that we are operating in California. We have operated and I know that we have operated in California for quite a period of time.

Q. And don't you know that the Supreme Court of California has held that the method in which you were operating in Oregon in the '30s is illegal in California because it is practicing medicine by a corporation? A. I do not know of that fact.

Q. You didn't operate in California in the '30s? A. Beg pardon?

Q. You didn't operate in California in the '30s? A. No, I do not know of any of our work back as far back in the, back in 1930. I think our work in that state came later.

Mr. Jaureguy: Now, I want the record to show that I have here before me the transcript of proceedings which I was asked by the Court to bring upon a request by the Government counsel; and since I have it here, I would like to refer to it in asking a question or two.

146 Mr. Marcus: Your Honor, may I ask that after we have had a chance to look at that—I don't conceive at this time we will want to ask Dr. Moore any questions about it, but if we do can we have permission to have Dr. Moore on the stand?

Mr. Jaureguy:

Q. I am not going to refer to very much of this, Doctor. I am not going to retry your case, I want to assure you, but I would like to call your attention to one or two things that you said at that meeting. A. May I ask what meeting it was I was asked—

The Court: That is so many years ago. At our 11:00 o'clock recess let him have a look at it, before you examine him.

A. A meeting I was present at?

The Court: This is a transcript you said yesterday you never saw.

A. Transcript of what?

The Court: Just go to something else for the present.

Mr. Jaureguy: Yes. The questioning of the doctor on the transcript—

The Court: I know what it is. Go to something else.

Mr. Jaureguy: I would like to say that the questioning on the transcript was the last thing I intended to do, so—

The Court: Begin your redirect, Mr. Marcus.

Redirect Examination

By Mr. Marcus:

Q. Doctor, to your knowledge has the State Society ever asked the Multnomah County Medical Society to re-
147 instate you?

Mr. Jaureguy: I object to that on the ground—

Mr. Marcus: The question is based on something you asked the doctor.

The Court: Overruled.

Mr. Jaureguy: I want the record to show it was hearsay.

The Court: Overruled. Read the question.

A. No, I have never been asked by the State Society or any—the question is, did the State Society ever ask the local Society to reinstate me. To my knowledge, No.

Mr. Marcus: Doctor, you have mentioned an incident involving Dr. Shea. Could you tell us the approximate time when that occurred, within a year or two?

A. I think he ended his term two years ago. Two years ago I think he ended his term in office, at which time he made his remark, after he had finished his term in office.

Q. I see, Doctor, you mentioned that there was a secretary of the Society who resigned at that time because of his feeling about this matter. Could you give us the name of that secretary? A. I hesitate to do so. It was largely a personal matter. Unless there is some definite reason I should bring this man's name into it, I wouldn't like to. He told me why he resigned.

Q. Doctor, it was not Mr. Foley? A. No, no. It was one of the doctors who is—well, now, maybe he is not secretary—he was a member of the Council of the local
148 city and county, and he, I think—I think they have a secretary separate from Mister—I think Mr. Foley is Secretary of the State Society, if I understand it right.

Q. I understand— A. This man was secretary of the local, Multnomah.

Q. I understand Mr. Foley is Secretary also of the Multnomah County Medical Society. A. Well, then, this man had to sign his name to the letters that went out and told me that when the resolutions were passed and went out he had to sign his name. He said he felt very much—he was there when Dr. Shea was there—

Q. I see. A. He felt very much, tried to bring this matter before the Council. He couldn't get anywhere and he finally said he could not go on conscientiously and sign his name to their affairs and resigned, and resigned his office, that particular office.

Q. Was this about the same time as Dr. Shea's office? A. Yes, it was during the same term when Dr. Shea was president.

Q. And, Doctor, you stated in response to a question by Mr. Jaureguy that this clique— A. This what?

Q. Clique. A. Yes.

Q. —has picked persons from outside the state to control the State Society. Now, did you mean the state or the city? A. No; the local Society has so many dele-
149 gates that would go to the State Society. Whether or not the number of those delegates was enough to form a majority—

Mr. Jaureguy: I want to object to this as all hearsay, your Honor.

Mr. Marcus: It is too late, your Honor. He has already elicited this testimony from the witness.

Mr. Jaureguy: Counsel knows I didn't elicit it. It was all voluntary.

The Court: State your objection.

Mr. Jaureguy: I object to it on the ground it was hearsay.

The Court: Overruled.

A. There are certain men that they went and picked from outside.

Mr. Marcus:

Q. Outside where? A. Outside Multnomah County. They were men who were delegates from other counties.

Q. Yes. That is all right. A. And they may—

Q. Now, Doctor, you have said that your members can come to the prescription department and the drug department of the Industrial Hospital Association and purchase their drugs and get their prescriptions. Do you know whether they are allowed special rates? A. No, not spe-
cial rates, but the organization, our drug depart-
150 ment, is not there, never was constituted to be an earning entity, and I don't think our percentage of writeup of profit is as great as the average drugstore, and our people consequently have been able to have their prescriptions filled, I think, at a less amount than they would pay if they went to an ordinary drugstore.

Q. Doctor, yesterday Mr. Jaureguy asked you a question which appears on Page 105 of the transcript with respect to the effect of the activities of these doctors on the organizations, and you gave a rather lengthy answer. Subsequently, in response to a question which appears on Page 115 of yesterday's transcript, you were asked whether these activities embarrassed the Association. I would like

to ask you at this time whether your second answer was meant to qualify your first.

Mr. Jaureguy: Where is that?

A. Well, I would have to see what the answers are.

The Court: Read it at recess. That will be in ten minutes.

Mr. Marcus: Well, your Honor, that is all the questions I have.

The Court: All right. Call your next witness.

(Witness temporarily excused.)

Mr. Marcus: Your Honor, before calling the next witness—

The Court: Mr. Jaureguy, do you want to give him now the transcript so he can read what it is you want.

151 Call your witness, Mr. Marcus.

Mr. Marcus: Well, your Honor, I would like to bring up one thing which I forgot to bring up yesterday.

The Court: Call your witness.

Mr. Marcus: Mr. Brunkow.

The Court: Now, while he is coming up, what do you want to bring up?

Mr. Marcus: Your Honor, you recall last week when we asked Counsel if they could furnish us the names of the members of the Medical Society. I would like to ask Mr. Jaureguy about that. We have not received those.

Mr. Jaureguy: I did tell the Court I would produce, if we did have any lists, I would produce the lists. Unfortunately we don't have any lists. I would be glad to explain what we do have. We have a card index system where the name of each doctor is in the card index together with his membership and payment of dues for a number of years, and when that card gets full they put that in another file, and when a doctor dies or resigns they take his card out and put it in another file, or if he moves away; so we have two card indexes. On is a live file of present members, and one is the old cards of present members and the cards of men who are no longer members.

Mr. Marcus: Well, your Honor, I renew our request. Whether there are cards or not, the defendants are quite capable of giving us that list.

152 The Court: Could somebody make a list of that?

Mr. Jaureguy: Well, I don't like to have Mr. Foley—

The Court: I will tend to that. The Government will bear the expense. Can somebody be employed for that?

Mr. Jaureguy: We can try to employ somebody or the Government can. You are asking me—

The Court: He is giving you the chance to employ somebody.

Mr. Marcus: Yes, we are quite willing.

Mr. Jaureguy: Yes. That can be arranged.

RAY BRUNKOW was thereupon produced as a witness in behalf of Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Mr. Brunkow, are you connected with the Industrial Hospital Association? A. Yes.

Q. In what capacity? A. General Manager and Secretary.

Q. And how long have you held that position? A. A little over two years.

Q. What position, if any, did you hold prior to that time with the Industrial Hospital Association? A. I was
153 Claims Manager and Field Representative prior to that.

Q. Could you tell the Court the general nature of your present duties; that is, the duties in your present position? A. To oversee and administer the affairs of the organization in the daily conduct of its business.

Q. And what is the nature of that business? A. Prepaid health care plan.

Q. Does the Association have field representatives who solicit and service prepaid medical care accounts for the Association? A. Yes. Six, I think.

Q. Could you give us their names? A. Mr. W. Duane Kirk, (spelling) K-i-r-k; E. N. Donnelly, Al Walsh, Linn Jones, John Caughell, and our Claims Manager for the time being is Mr. Ray Radford.

Q. Do you have any other officers or executives? A. I named Mr. Kirk who is our Assistant Manager, who spends a great deal of time out servicing our accounts.

Q. And did you assist Mr. W. T. Kirk, is it? A. Yes, Will T. Kirk.

Q. Prior to his death? A. Yes.

Q. Could you tell us whether the Association solicits accounts, prepaid medical accounts, in other states?
154 A. Yes, in the State of Washington.

Q. To your knowledge, do other prepaid medical care organizations such as the Oregon Physicians' Service have salesmen who solicit such accounts, or solicit accounts generally? A. Solicit accounts generally, yes.

Q. Now, you mentioned that you have a staff of field representatives. Do you have business staff meetings from time to time at which these field representatives are present? A. At least weekly.

Q. And has this been true since you became General Manager in 1944? A. Yes. It was true prior to that time.

Q. At those meetings do you and the staff discuss complaints from accounts and difficulties brought to your attention arising in connection with prepaid medical care accounts? A. That takes most of the time.

Q. What kind of complaint would you say is most often taken up at those meetings?

Mr. Jaureguy: I object to that as hearsay.

The Court: He may answer.

A. What was the question?

Mr. Marcus:

Q. What kind of complaint would you say is most often taken up at these meetings? A. I would say the routine, the two primary questions are explaining the manner in which accounts were satisfied or quieted down by
155 refusal of the doctors to take tickets, and the other point is with respect to explaining the difficulties in servicing or clearing accounts were insufficient information has been given and fees exceed those fees normally charged by the industry.

Q. Are some of such complaints made to you by your accounts personally by telephone? A. Yes.

Q. And do you have occasion to discuss such complaints and difficulties over the phone? A. Yes, frequently.

Q. And in your office? A. Yes.

The Court: We will be in recess.

(Short recess.)

156 Mr. Jaureguy: Would it be all right to recall Dr. Moore now?

The Court: Yes.

Dr. CHESTER C. MOORE, having been previously duly sworn, as a witness on behalf of Plaintiff, was recalled and further testified as follows:

Further Cross Examination

By Mr. Jaureguy:

Q. Doctor, have you read certain portions of the transcript of proceedings of November 16, 1936, before the Board of Censors of the Multnomah County Medical Society? A. I read it over in a brief way, yes.

Q. The proceedings in which you state that there are certain defects and abuses by hospital associations? A. That remark is in there, yes.

Q. Would you just explain what defects and abuses you had in mind when you said there were many abuses in the hospital associations? A. In days when we had to have men go before the companies and before the unions, out amongst men, we had to procure men who were not trained in this line of work, and, while we tried to get good men and we gave them instructions, in their enthusiasm to get this work, or in competition with others who were after the contract work, many times I think they overstepped
157 the boundaries of propriety in what we would consider professionally good solicitation.

By that I do not mean that they committed any offense, but to a professional man it was a little unusual, a little unusual, and many times they said things before bodies of people, things that were not even in the contract, and I have often said to some of these men, "You went to work and contracted to deliver strawberries on the top of Mt. Hood. We can't deliver that." In other words, they made statements that the contract did not contain. They were brought in and lectured and told to correct things of that sort.

So, I say in getting men to go out amongst people it has been very difficult, and we have found over the years, as we have developed it, it took years of training of these men to get these men to understand what they could say and what they could do, and keep within the boundaries of what would be considered by the medical profession as proper procedure. That is what I meant by the statement there.

Q. On Page 47 you said, "Salesmen have been forced at times to do things that I think probably, under ordinary conditions, without such pressure, they would not have done, and I said to you, in my talk here, I think there are many abuses in hospital association work that can be corrected." A. Yes. I told the Board of Censors that in handling contract work for the profession it was my opin-

ion by cooperation between the competing organizations, by getting together, by having the medical fraternity get together, those who directed it, that we could make these men conform to the things that we would consider more ethical and, as I stated once before, this whole program of prepaid medicine has gone through a slow, gradual evolutionary change and betterment, and that is one of the betterments.

One of the betterments has been a better understanding of what it is to go out and solicit a company and solicit employees, what to say and what not to say, and I have instructed our men—I have not, but my management has. We are very strict with that. They make these men conform, make them conform to what we consider ethical means of procuring business.

Q. I take it when you refer to abuses in hospital associations— A. I meant that these men would say things they should not have said.

Q. Well,— A. Yes.

Q. Let me finish my question. A. All right.

Q. You might answer it a little differently. Were you confining yourself, your remarks, to the Industrial Hospital Association or were you— A. No. It was general; it was general between various bodies, organizations who were seeking to carry on this business, competing organizations.

Q. When you referred in your statement to the Board of Censors about many abuses, you must have had in mind some abuses other than those of the solicitors who made improper promises and statements? A. No, not particularly so. I think that was one of the things that I refer to there, the fact that the greatest trouble we had was to get men, our solicitors who went out with these people, among these people to conform to what I have just stated.

Q. On Page 58 you are referring to the contract with Jantzen Knitting Mills. A. Yes.

Q. And you said this: "I will say this, though, that in our solicitation work there have been many abuses in solicitation work, and one thing that I have always insisted on in our organization is that we come clean on solicitation. While I don't know the exact facts, I could say to you that this contract was written—that there was nothing in it by the way of buying it or offering free service to anybody to get it."

What did you mean by that last expression, "buying or offering free service"? A. The word was "binding"?

Q. "Buying." A. Buying? What?

Q. Yes. A. By that I meant that they would of-
160 fer some person something to get their business.

Q. What would you offer? A. What could be offered? What would an ordinary salesman offer to someone to try to get them to—to get their business? It might be anything—a reward of some sort.

Q. All I am asking you is whether you would not give the manager of the corporation or the chief officers private rooms and private nurses? A. I wouldn't know what might be offered, but I do know as far as our organization was concerned, and the men we have had under us, I think I would discharge any man who ever offered or gave remuneration to anybody to succeed in procuring a contract for my company.

Q. Yes. I do not doubt that at all, but what I am getting at, when you refer to these abuses, among other things, solicitors either for your hospital association or for other hospital associations would go out and offer rewards to the particular official of the company who had authority to enter into the contract, or offer him his hospital service free, and doctors' services free and things of that kind?

Mr. Marcus: Your Honor, I object to that question as far as it relates to other hospital associations. How would Dr. Moore know, except by hearsay, as to what other hospital associations did?

161 The Court: Overruled.

Mr. Jaureguy: Is that what you had in mind?

A. May I ask the question again?

Q. When you refer here to these abuses of buying contracts or offering free services, what you have in mind is that— A. I had in mind this, that if any of our men ever committed an abuse of that kind I think I would have them discharged, if I could.

Q. But when you refer to abuses, you refer to a practice of some solicitors and maybe some hospital associations? A. No, I am referring to nobody but the actions of my own men.

Q. And that is that they would sometimes go out and offer free services, as you say here, free services of a medical and hospital nature, or other rewards to the person signing the contract? A. No kind of reward—our people never offered any kind of reward.

Q. That practice, as I understand your testimony, or those practices have now been eradicated? A. I think the whole picture of prepaid hospital work has progressed,

and most of the early abuses have been gradually eliminated. I won't say that even today hospital association work is perfected, but it is getting much better.

Q. Your present form of contract and type of contract you have now had for seven or eight years or so has
162 greatly furthered the perfection of the hospital association business, has it not? A. When we offered free choice of physicians we did one thing for the medical profession which I think they should have appreciated.

Q. Yes. A. We were not trying to corral any work. We wanted the entire profession to benefit by their own professional skill and let the patient go to whom they desired to.

Q. As you stated yesterday, the public benefited, too? A. I think that is a benefit to the public, to the benefit of the public.

Q. Of the public? A. Yes.

Q. You believe that improved the stature of hospital associations in this state? A. I believe it has.

Q. Generally speaking, Dr. Moore, hospital associations in the last seven or eight years are not subject to the abuses near as much as they were in the '30s? A. I answered that question a while ago.

Q. Generally speaking, that is true? A. Generally speaking, yes. This has been—This thing has been a gradual change for the betterment of things.

Q. And don't you think doctors recognize that?
163 A. I think they recognize it, but I think many of them do not appreciate it.

Q. You think they recognize it? A. I think they recognize it, but I don't think they appreciate it.

Q. Some doctors appreciate it, don't they? A. Probably so. I hope so.

Q. Yes. A. I hope so.

Q. You haven't any reason to believe that the medical profession as a whole does not appreciate it? A. No, not as a whole; no. But I think there are many of them that do not appreciate it.

Q. Many of them do not and many of them do? A. Yes.

Mr. Jaureguy: That will be all.

Redirect Examination

By Mr. Marcus:

Q. To your knowledge, has the Industrial Hospital Association ever given a reward to anyone who gets an account? A. Never to my knowledge.

Q. During the recess did you have occasion to read certain pages of the transcript of yesterday's proceedings? A. I did.

Q. Which I have referred to? A. I did.

164 Q. I will then repeat that question. Did you intend to qualify by your second statement the first statement you made? A. Well, did I attempt to qualify the first by the second? That is difficult to answer. I tried to make the statement as clear as I could, and just how the first one qualifies the second, just now I can't—I don't quite get the wording there. I could explain it, I think.

Q. With respect to the difficulties occasioned to the Association by the non-cooperation of doctors, what was it you meant to say? A. Well, the question, I understand, that was answered was how it hampered our work. Primarily—

Mr. Jaureguy: I object to that as repetitious, your Honor, and not proper redirect.

The Court: He may answer.

A. Primarily, the great difficulty that we have encountered, as I said before, was—I think you speak of not taking our checks, but I think the primary thing was when we furnished our companies with a contract and these men went and got their tickets, they naturally supposed that when they took that ticket to a doctor they could get service. Now, when they went to a doctor and handed him the ticket, a large number of doctors in the State of Oregon would not accept tickets and told them so. Consequently the man was frustrated. He didn't know what to do. He was

165 going to a doctor of his own choice and so he then probably—he did one of two things.

Mr. Jaureguy: I beg your pardon?

A. One of two things: He either had to leave the office or ask how he could get service. He would be told, "Well, I will give you service, but I will not accept your ticket."

That is a very, very common thing in the State of Oregon amongst those who have been trying to make things tough for us, a very common thing.

Mr. Marcus:

Q. Did your Association find that it had more work in servicing such accounts where doctors refused tickets and refused your checks?

Mr. Jaureguy: I make the same objection, not proper redirect.

The Court: He covered that fully yesterday. He explained that fully yesterday.

Mr. Marcus: All right, Doctor; you are excused.

Recross Examination

By Mr. Jaureguy:

Q. I want to ask a question here. As I understand it, when you go into a factory, you make the contract with the owner or owners of the factory and you don't give copies of the contract to all the employees of the factory? A. That was gone into yesterday. It used to be in the early days that most of the employers cooperated with us and with the men, and the employers arranged that—

166 Q. I am afraid you don't understand the question. I don't want to stop you, and you can make your explanation, but the question I am asking you is one that I think can be answered Yes or No,— A. Yes.

Q. —and that is, you don't give copies of the executed contract to all the employees? A. No, the contract at the present time is made very largely with—where it is a union shop—with the union and the employer both, and then it is put on file in the office with the employer.

Then there is a ticket issued which embodies a brief of what that contract covers. It is briefed and it is usually on the ticket.

Q. Most employees, you say, when they get these tickets and go to a doctor, they think it entitles them to service? A. Well, yes, and they think they can go to a doctor of their own choice and he will give service, but oftentimes they will not; they refuse to accept tickets.

Q. They get service and that is the last they hear from it? A. Well, they never get any bills.

Q. That is what they think their rights are? A. That is what they think their rights are, yes. They think the ticket entitled them to go to a doctor and get service, without even talking to him about it, and the doctor won't accept the ticket.

Mr. Jaureguy: That is all. Thank you.

Mr. Marcus: That is all, Doctor.

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167 Ray Brunkow, a witness produced in behalf of the Plaintiff, thereupon resumed the stand and was further examined and testified as follows:

Direct Examination (Continued)

By Mr. Marcus:

Q. Mr. Brunkow, does the Association with which you are connected have members who are resident outside of Oregon? A. Yes, a great many.

Q. Are some of them located in Vancouver, Washington? A. Yes.

Q. And is Vancouver just across the river? A. Yes.

Q. Mr. Jaureguy would like to know which river? A. The Columbia.

Q. Is Vancouver connected with Portland by bridges? A. Yes.

Q. Does the Association in carrying on its business correspond with members resident outside the state? A. It corresponds with subscribers outside the state.

Q. With doctors outside the state? A. Yes.

Q. With hospitals outside the state? A. Yes.

Q. With suppliers of medical supplies and equipment who are located outside the state? A. Yes.

168 Q. Do you receive correspondence from persons and concerns mentioned in the previous questions? A. Yes.

Q. What means of communication is used in contacting such persons and concerns or being contacted by them? A. The mails, Parcel Post, telegraphic agencies and telephones.

Q. Would you say that such communications made in carrying out the Association's business are regular and frequent? A. Yes.

Q. Do members resident outside of the state get medical care in the states of their residence under the Association's contracts? A. Yes.

Q. Do subscribers resident outside the state from time to time come to Oregon for medical treatment by doctors located in Oregon? A. If they wish to.

Q. To your knowledge have some such subscribers been refused treatment by Oregon doctors on the Association's tickets?

Mr. Jaureguy: I object to that on the ground it is hearsay.

The Court: He may answer.

A. Yes, they have.

Mr. Marcus:

Q. Has the Association had to take up with any of its Washington or California accounts matters arising
169 out of the refusal of Oregon doctors to accept tickets of residents of Washington or Oregon? A. With the employers it has, and with the unions, and with the subscribers.

Q. Do Oregon subscribers of the Association from time to time go out of the state for medical treatment under the Association's contracts? A. They have that right.

Q. Does the Association buy medical equipment and supplies from suppliers outside the state in carrying on its business? A. Yes.

Q. Would you say that annually such purchases are substantial in amount and value?

Mr. Jaureguy: I object to that as a conclusion of the witness.

The Court: He may answer.

A. Yes, it is, very substantial.

Mr. Marcus:

Q. Are moneys periodically sent to the Association from members outside the state in payment of premiums? A. Yes, daily.

Q. Does the Association regularly mail checks to places outside Oregon in payment of medical bills, supplies and equipment? A. Daily.

170 Q. During the past year did Mr. Belfrey of the Federal Bureau of Investigation contact you with reference to making a study of interstate operations of the Association as reflected in the records of the Association? A. Yes.

Q. Did you permit such a study to be made? A. Yes.

Q. Were you advised of the particular matters desired to be ascertained from such study? A. Yes.

Q. Will you tell us what you recall as to those particular matters. A. I recall that it took the work of our entire staff over a period of two years, going over our lists of subscribers, reviewing statements submitted from doctors and hospitals, and suppliers of medical supplies, ambulance bills, and following those through to where the case was cleared, where the payments were forwarded.

Q. Mr. Brunkow, when you said two years, did you mean two months? A. Two years.

Q. Do you mean that you spent or that your office spent two years in getting up this study for the Federal Bureau of Investigation? A. A little over two years.

171 Q. Mr. Brunkow, let me come back to my original question. Did Mr. Belfrey during the past year contact you for the purpose of having a study made with respect to interstate operation? A. Yes.

Q. Did that study take place during the present year? A. Yes.

Q. So that when you stated two years was taken in making the study, were you incorrect in making that statement? A. I wouldn't say I was incorrect, for the first FBI man came to our office the day after Mr. Kirk died, which was in 1947. Then it lay dormant for quite some time, and then it blossomed into a great deal of activity within the last eight, nine or ten months, something like that—within the last year.

Q. After Mr. Belfrey contacted you during the present year was such a study made in your office by members of the Federal Bureau of Investigation and members of your staff? A. Yes.

Q. Did you designate members of your staff to assist in making that investigation? A. I designated the whole staff.

Q. Under whose supervision was that study made? A. It was under my supervision.

Q. What part did Mr. Belfrey play in having this study made? A. He came to me with requests for the information, and directed the assembling of that after we

172 gathered up the loose ends.

Q. Do you recall what Federal Bureau of Investigation agents, if any, worked in the offices of the Association making the study? A. Well, in making the study itself there was Mr. Belfrey and Mr. Keeler or Keever, or some such name.

Q. Would the name Bieler mean anything to you in that connection? A. What is that?

Q. Would the name Bieler— A. That is the name.

Q. You were consulted from time to time with respect to that study? A. By those two agents as well as Chief McCulloch or McCullough, whatever his name is.

Q. Have you seen the results of that study? A. Yes.

Q. I show you Exhibit 1445 and ask you whether that is the result of that study? A. I can't say that. It starts out as the same one that I saw. Do you want me to look at every page?

The Court: No. It is the same study. There is no doubt of that, is there? Are you willing to stipulate—

Mr. Jaureguy: I don't have any doubt about it at all.

The Witness: That is right.

173 The Court: He says it is now.

Mr. Jaureguy: I haven't seen it, but I haven't any doubt about it.

The Court: It is one of these Pre-Trial exhibits.

Mr. Jaureguy: It is after 1400. I have only gone that far.

The Court: Are you going to read the other three hundred?

Mr. Jaureguy: I might bring up that subject right now. Might I have permission Friday when we adjourn to take them over the week end, some of them?

The Court: Certainly.

Mr. Marcus:

Q. Mr. Brunkow, are you satisfied that under the conditions this study was made, it is an accurate study? A. Yes.

Q. Mr. Brunkow, I show you Exhibit 1742, which purports to be the worksheets on which this study is based. I ask you to look at the pages at which there are pieces of paper and state whether you can identify the names of the persons on those pages. A. Do you want me to name them?

Q. Yes, name and identify them. A. Mary Lippencott is one of our employees.

The Court: Call out the page number.

The Witness: It is receipt no. 1.

Mr. Marcus: Mr. Brunkow, does that relate to

174 the paragraph or the page? A. Well, it is the end of the little study here. There is four or five pages together, and this slip follows those four or five pages.

Mr. Marcus: Your Honor, if I might explain—

The Court: You don't need to explain it. Just make sure that those pieces of paper are not misplaced so that Mr. Jaureguy will have them before him in the same order, unless you want to make a record of the page number.

The Witness: There are no page numbers.

Mr. Marcus: Your Honor, if I might point something out—

The Court: You can defer your cross-examination on all this until after you have seen the exhibits.

Mr. Jaureguy: Very well, thank you.

The Witness: This Question No. 1 was answered by our employee, Mary Lippincott. The summary of the contracts

is—there isn't any name on this one. I think you have got a spare sheet in here. There is no name on it.

Mr. Marcus: If there is no name, don't bother.

The Witness: This is Answer 7 and 18, answered by Rosemary Lyons, one of our employees. No. 9, prepared by Homer Woodard, who is the manager of our drug department. Then the same question, the same employee. This No. 14, the figures were compiled by Mrs. Sterner, who was Mr. Will T. Kirk's private secretary for a number of years, and was at the time these forms—she was our employee at the time these forms were prepared. Next is 14 and 15.

I don't find any name on that one. No. 18 was pre-
175 pared by Miss Blanche Simpson, an employee of ours at the time she helped on this report. No. 19 was prepared by Mrs. Brunkow, my sister-in-law, who was an employee at that time. No. 20 has been prepared by Mrs. Sterner, Mr. Kirk's secretary, and our employee. The last is a recap of the revenue figures prepared by Mrs. Fay Stevenson, who was our bookkeeper.

Q. Mr. Brunkow, has the Association authorized from time to time the making of an analysis of water supplies of concerns who have contracts with the Association? A. Yes.

Q. Are those analyses at times made in states other than where the concern is located? A. They could be. Right at the moment I can't recall, but we have a number of logging camps up in Washington, and that is part of our service, and the samples would be withdrawn in the normal course of business, sent down by mail to us, and we sent them to the Department of Health.

Q. Mr. Brunkow, does the Association from time to time receive complaints in the mail from subscribers respecting difficulties had because of non-cooperation of doctors? A. Yes.

Q. And have there been instances where firms or individuals under contract with the Association have sent the Association letters they had received from doctors
176 advising them they would not accept the Association's tickets? A. Yes.

Mr. Jaureguy: I am going to object to all this questioning on the ground that is all in the exhibits over there. They have produced them. The letters are over there, and that is the best evidence.

The Court: Proceed.

Mr. Marcus:

Q. Have your field representatives from time to time turned over to you such letters that were given to them by your accounts? A. Yes.

Q. When the association received a letter stating that a doctor would not accept tickets, what is the normal action taken by the Association? A. The first thing is to reply, either by visit on the part of the salesman to the subscriber himself, or to his union or to his employer, and to attempt to sell our subscriber on the idea that the principle of his coverage has not been—

The Court: Do you use the words subscriber and member, do they mean the same thing to you?

A. Yes.

The Court: That means the individual in every case?

A. Yes.

The Court: It doesn't mean the contracting employer or the con acting union?

A. No.

177 I attempt to explain to our member that his coverage, his rights to benefits, has in no wise been jeopardized by failure of his doctor to refuse to accept his identification slip, and—well, that is our procedure.

Q. Well, Mr. Brunkow, when such letters are received, more especially when you are advised by an employer that trouble is being had because of non-cooperation of doctors, is it customary for you to contact one of your field representatives and send him down to see what can be done with respect to that situation? A. That is right, we get on the telephone, or we get a salesman down there. We do what is necessary to work out this problem.

Q. Where that happens do you sometimes get requests from the local unions to have your representatives come down and discuss the matter? A. Every one of our salesmen has a regular route. He calls on his unions at stated periods to gather up these bills that have been presented to our individuals, to our subscribers, and to keep them sold on the idea of keeping the coverage under the Industrial.

The Court: Do you have any contracts just with unions?

A. No. Yes, I take it back. We have one.

The Court: Well, what function does the union play?

It doesn't play any financial part in any case? The
178 employer with the member's consent, he makes the deductions?

A. That is right. The employer nowadays takes the position that it is the workman's money, and it is immaterial to the employer for whom he makes deductions.

The Court: You don't have any cases where the unions deduct from union dues and pay you?

A. No. It is out of wages earned.

Mr. Marcus:

Q. Mr. Brunkow, do you recall any occasions when the Association was notified by a union that they were having special meetings to discuss these problems and would want to have one of your representatives present?

Mr. Jaureguy: I object to that as not being the best evidence. The best evidence is over in the file.

The Court: Proceed.

A. I would say we have requests like that every several weeks.

Mr. Marcus:

Q. And does the Association send some representative down to such union as a result of such request? A. Yes. We send or go ourself.

Q. Mr. Brunkow, do letters of complaint and communications respecting difficulties had because of non-cooperation of doctors become part of the files of the Association regularly kept in its business? A. Yes.

Q. Mr. Brunkow, I show you a folder of documents marked 513 to 637 and ask you to glance at those
179 documents and state whether they are documents taken from your files and turned over to the Court and counsel.

The Court: I think this is all covered by the stipulation.

Mr. Marcus: If I was sure about that, your Honor—

The Court: I am sure about it, and I am the only one that needs to be sure.

Mr. Jaureguy: I think I covered that in the letter, your Honor.

Mr. Marcus: Well, on that understanding, your Honor, I will withdraw that question.

Mr. Jaureguy: I may say, I haven't examined this file with that in view, but I stipulated that when any document on its face appeared to be taken from the files of an organi-

zation, I admitted the photostatic copy was a true copy taken from the files.

Mr. Marcus: His stipulation goes only to the documents which show on their face, and that is the reason I am asking these questions.

The Court: Well, if I haven't gotten it yet, I will require a stipulation that everything I have read here came from where it purported to come from. Otherwise, you are wasting my time.

Mr. Jaureguy: That is the purport of what I intended to say in my letter.

The Court: Yes.

Mr. Marcus:

Q. Mr. Brunkow, have doctors refused to accept
180 the Association's checks? A. Yes.

Q. Have they done so recently? A. Yes, within the last two weeks.

Q. Has the Association received letters from doctors stating they would not accept tickets of the Association? A. A great many.

Q. Mr. Brunkow, would you state what cooperation you have had with Doctor James Sears of Salem. A. Well, I hesitate—you have asked a question, and I must answer. We have had cooperation from Dr. Sears down in Salem. That has been to my knowledge a personal matter with him. Dr. Sears is a friend of John Caughell's, our salesman in Salem, and Dr. Sears has never refused treatment for an Industrial Hospital Association patient, to my knowledge anyway, and he takes his bills and bills them to his patient, and hands them to our salesman, who in turn forwards them to our office, and we make our Association check payable to our salesman, who, I presume, cashes it and hands it over to Dr. Sears.

The Court: That is the hard way, isn't it?

A. That is right.

Mr. Marcus:

Q. Mr. Brunkow, do your field representatives advise you of complaints and difficulties they experience in the field with respect to non-cooperation of doctors? A. Yes, they do.

Q. And is part of your time taken up in discussing
181 these matters with them? A. I have wondered what I would do if I didn't have that problem.

Q. It happens so frequently? A. That is right.

Q. In what other ways, if any, do you consider the refusal of doctors to accept the Association's tickets to have caused extra expense to the Association or retarded its operation?

Mr. Jaureguy: I object to that as a conclusion of the witness.

The Court: He may answer.

A. Well; whether it is right or wrong, I don't know, or whether there are any implied implications, or whether there are no implications, when a doctor accepts a ticket that the principle of our subscriber's coverage is in no wise affected, but when a doctor—that is the first question that ever comes up when our men go to an account, say, "Do the doctors take your tickets?" That comes first over the merits of our coverage, and if we are unable to say that the doctors take tickets, we already have two strikes against us, and it wastes time, it wastes effort in an attempt to get business and, of course, in our own office we have had to hire a very large crew. In the old days, or when you had a doctor who will accept your tickets—and these tickets, we don't look on as requisitions for care. It is merely an identification. One doctor may see a hundred Industrial subscribers and one check will take care of a hundred Industrial sub-
182 scribers, whereas the doctor refuses to take the ticket, one hundred Industrial subscribers will go to that doctor or may go to that doctor, and that doctor's office will mail out a hundred subscriber's bills. They in turn mail them to us. And, of course, it is an accepted fact that when bills come in in that manner, they just say, "Professional services rendered, $35," no itemization, and no nothing, and so then we have to write back—and a hypothetical case, which isn't too true—and when we have to write back to, say, seventy-five of those people, and they have to write back and say, "We don't see all this monkey business", so when we get through we will send out seventy-five or a hundred checks to seventy-five or a hundred Industrial subscribers, all covering services by this one doctor; and, you can appreciate that it is very cumbersome and bulky and is not a healthy way of having to conduct a business.

Q. Do some doctors refuse to give the Association itemized statements or ignore requests for such statements?

Mr. Jaureguy: I object to all this on the fact that it is documentary, it is in the file.

The Court: Well, now, of course, Mr. Jaureguy, you are bringing up something that is very obvious, that we could shorten this trial greatly if we did just what you would

like to have your opponent do now. On the other
183 hand, if you would do on your cross-examination what you would like Mr. Marcus to do, be very brief, I have no doubt submission in the end and determination of the case would be about the same, if we would just fill in rather briefly the background of those documents. But, that has been clear to me from the opening hour of the case, that you are both going to be under the temptation to provide local color. I can see that, and I am not disposed, at least in the first week, to cramp your style, either side, but I am clearly of the same opinion that you are, that the case is ninety per cent over there in the documents, because I have already seen them and read them, and but little will be added to the factual situation from the witness-stand.

Mr. Jaureguy: I understand that, but I hope your Honor doesn't object to me making my record anyway.

The Court: That is all right. But the same thing is going to apply to you when your turn comes, and it applies to the cross-examination.

Mr. Jaureguy: Oh, yes.

The Court: And I don't blame you.

A. What is the question?

The Court: Ask another.

Mr. Marcus:

Q. I think the question was, do some doctors refuse to give the Association itemized statements or ignore requests for such statements? A. Well, all those who bill us give
184 us the same information the same as they give any medical service program or any insurance company information. But there are instances where our subscribers are unable to get information to help them have their case cleared from their own doctor.

Q. Mr. Brunkow, at my request did you have prepared a list of some of the doctors who have refused to accept Association tickets? A. Yes.

Mr. Marcus: I should like to have this document marked for identification.

(List of doctors, so produced, was thereupon marked for identification Plaintiff's Exhibit No. 1853)

Mr. Jaureguy: He has explained what it is, and I won't take the time now to read it.

Mr. Marcus:

Q. Is that document such a list? A. Yes.

Q. Is that a complete list of the doctors who refused to accept the association's tickets? A. I would hesitate to say it is a complete list. I would say No, it is not.

Mr. Marcus: I would like to offer that as an exhibit in evidence, your Honor.

The Court: It is admitted on the same terms as the others.

Mr. Jaureguy: That is provisional—we still may make our objections to it?

185 The Court: Certainly.

(Plaintiff's Exhibit No. 1853, previously marked for identification, was received in evidence)

Mr. Marcus:

Q. I show you Exhibit marked 530. And I ask you to read the second full paragraph on page 3 of this document. A. "There is no change at all in regard to the doctor situation in Grants Pass, Roseburg, Klamath Falls, Yreka and Dunsmuir."—

The Court: What number is that?

Mr. Marcus: It is on the back.

A. 530.

The Court: Mr. Reporter, for the present, when any part of an exhibit is read the instructions to the reporter are to take the exhibit with them and incorporate the whole within the record at that place.

A. "In Medford we have received letters from the following doctors saying they would not accept our hospital tickets after January 1, 1939: Dr. Hayes, Dr. Drummond, Dr. Lemery, Dr. Durno, Dr. Thayer, Dr. Kresse and Dr. Findley. It is our judgment that these doctors will not long adhere to the notices they have sent us, but in the event they should, your employees will still have available the services of Dr. Sweeney, Dr. Bishop, Dr. Inskeep, Dr. Sleeter, Dr. Loeffler, Dr. Howard, and Dr. Sherwood."

186 (Exhibit 530 is as follows:)

"Mr. H. H. Cleland, President
California Oregon Power Company
Medford, Oregon

"Dear Mr. Cleland:

"In reference to your letter of December 20, relating to our medical contract service for your company, I am en-

closing a financial statement as of December 31, 1937. Our next financial statement will be compiled as of December 31, 1938, but because of the nature of our business it is impossible for us to close our books and make this statement until in February. You will understand, of course, that we do not know what revenue we will receive for the month of December, or what our expenses will be for that month until the remittances reach us in January, and the bills from the various doctors, hospitals, etc., are sent to us in January. This makes it impossible for us to close our books promptly at the end of the year, but must wait until the first of February. However, will say that any change in the financial statement will show a slight improvement, as we believe our business will show a small profit for the year.

"I am also enclosing a list of the companies with which we have medical contracts in the southern Oregon district, and a copy of the proposed renewal contract. I am not able to give the number of employees of each company,
187 as I do not have that information.

"As to the doctors whose services will be available to your employees during the coming year under our medical contract service, I can say that so far as any information which has come to us is concerned, there will be no change in any of the cities or towns where your company is located, with the possible exception of Medford and Ashland.

"During all the years that we have been taking care of employees of your company under our medical contract, we have never asked the doctors to sign any agreement that they would work for our association, but during these years we have functioned by authorizing such physicians as were acceptable to us to accept cases under our contracts and to look to us for the payment of their bills according to a stipulated fee schedule. During most of these years, the official attitude of the medical societies has been one of opposition to all forms of medical contracts, and we have refrained from subjecting any physicians to possible embarrassment with his medical society by asking him to sign any agreement or go on record in writing as to his relationship with our Association.

"As the medical societies have come to realize the popularity of medical contracts or prepaid medical service is so widespread that it cannot be driven from the field,
188 they have followed various means of attempting to gain control of this form of service. Their viewpoint seems to be that prepaid medical service should be

conducted in the interest of the physicians, whereas our viewpoint is that it is in the nature of an insurance business and should be conducted from the viewpoint and in the interest of the men and women who are paying the dues. Any benefits accruing to the doctors through the prompt payment of their bills is only incidental.

"In various counties the medical societies have organized hospital associations and attempted to operate them in the interest of the physicians. Almost without exception, they have found to the apparent surprise of the doctors, that they could make but little headway in obtaining business in competition with the older established hospital associations. Their next step has been to resort to attempted boycotts in an effort to force employers to accept their contracts and to drive the so-called commercial hospital associations from the field. These boycotts have not proven successful, as they are predicated upon a wrong principle.

"The doctors in the local association attempt to confine their services to their own members, whereas under our contracts, the employees may obtain services not only in their home cities, but wherever our association has
189 its service established and particularly do they have the benefit of the services of our staff physicians, surgeons, and specialists in Portland at all times.

"For the protection of the companies with which we have contracts, as well as for the protection of ourselves, we carry a liability insurance policy of $50,000-100,000 limits. This policy provides complete protection for any employer against whom any claim might be made for damages as result from any services performed or omissions made in connection with our contracts. In this day when many employees jump at the least opportunity to make claim for damages this liability policy, we believe, is of very vital interest to all employers participating in medical contracts.

"There is no change at all in regard to the doctor situation in Grants Pass, Roseburg, Klamath Falls, Yreka and Dunsmuir. In Medford we have received letters from the following doctors saying they would not accept our hospital tickets after January 1, 1939: Dr. Hayes, Dr. Drummond, Dr. Lemery, Dr. Durno, Dr. Thayer, Dr. Kresse and Dr. Findley. It is our judgment that these doctors will not long adhere to the notices they have sent us, but in the event they should, your employees will still have available the services of Dr. Sweeney, Dr. Bishop, Dr. Inskeep, Dr. Sleeter, Dr. Loeffler, Dr. Howard, and Dr. Sherwood.
190 "You will notice that both of the eye, ear, nose and throat specialists sent notices. If they should adhere

to their notices, then we will take care of eye, ear, nose, and throat services by having the employees go to the doctors as private patients and obtain from the doctors an itemized statement of the account, with diagnosis, and when the same is forwarded to us we will reimburse the patient.

"I might also say, that since the federal grand jury in Washington, D. C. returned an indictment against the various officials of the District of Columbia medical society and the American Medical Association for an attempt to coerce doctors from serving a hospital association in the District of Columbia, that all activities in regard to any boycotts in this state, so far as we know, have ceased, and that is one reason why we believe that the movement in Medford will not be pushed and that our service will continue very largely as it has been in the past.

"I expect to visit Medford next week for the purpose of calling upon you for a further discussion of this matter, if the same is agreeable to you.

"Very truly yours, INDUSTRIAL HOSPITAL ASS'N.
"General Manager
"WTK D

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191 Mr. Marcus:

Q. Now, taking each name—

The Court: Who signed the letter?

A. Will T. Kirk.

The Court: To whom?

A. To Mr. Cleland, the President of California-Oregon Power Company.

The Court: The date is what?

A. January 5, 1939.

The Court: Now, ask your question, Mr. Marcus.

Mr. Marcus:

Q. Taking each name of a doctor stated in that letter to have refused to have accepted the Association's tickets, but which the writer, but whom the writer thought would not long refuse to accept the Association's tickets, state whether or not those doctors have continued to refuse to accept the Association's tickets. Take each doctor's name up one at a time.

Mr. Jaureguy: If he knows the answer.

A. Dr. Hayes, Dr. Drummond, Dr. Lemery, Dr. Durno, Dr. Thayer—Dr. Kresse I can't say. I think he was gone before my time. And Dr. Findley I am not familiar with. I do not find any checks in our office payable to them.

Now, we have this other list, Dr. Sweeney, Dr. Bishop, Dr. Inskeep, and the rest of them—

Mr. Marcus:

Q. Well, I just asked you for those particular names.

A. They have refused checks, they have refused
192 tickets I should say—

Mr. Marcus: Your Honor, shall that document be turned over to the reporter to be incorporated into the transcript?

The Court: Yes. Recess now until 2 o'clock.

(Noon recess)

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193 AFTERNOON SESSION

Court reconvened at 2:00 o'clock P. M., Wednesday, October 19, 1949.

RAY BRUNKOW, a witness on behalf of Plaintiff, having been previously duly sworn, resumed the stand and further testified as follows:

Direct Examination (Continued)

BY MR. MARCUS:

Q. Mr. Brunkow, I would like to run through a list of the names of some of the individual defendants in this case and ask you whether they have accepted Association's tickets. Dr. Baum? A. To my recollection, no.

Q. Dr. Fitzgibbon? A. No.

Q. Dr. Hunt? A. Not to my knowledge.

Q. Dr. Leitch? A. No.

Q. Dr. Martzloff? A. No.

Q. Dr. McLean? A. No.

Q. What has been the situation in Clackamas County with respect to doctors cooperating with the Associa-
194 tion? A. In so far as Industrial is concerned, there hasn't been much of a situation. We have not been in there for a number of years. We have one account in

Woodburn, but there is not any activity there as far as our organization is concerned.

Q. What reason is there for there not being activity on the part of your Association in that county?

Mr. Jaureguy: Object to that as calling for a conclusion of the witness.

The Court: Answer.

A. From the background, of course, of the correspondence that I saw and turned over to the Justice Department, I can merely surmise—

Mr. Jaureguy: Now, I renew my objection.

The Court: He may answer.

A. —there was a great deal of correspondence built up, and from my conversations with our salesmen, the sole reason that we lost our business in Clackamas County, which was primarily Oregon City, was because of the doctors' refusal to cooperate with us.

Q. What about Clatsop County? A. In Clatsop County we have been active and still have some business in Clatsop County. It has been necessary that we establish several cash revolving funds in Clatsop County and give our—agent is not the word—our representative down there authority to pay any bills that come in, irrespective of whether
195 there is any diagnosis, any itemization, that is presented, in our effort to salvage and retain whatever was left.

Q. Is that method of doing business in Clatsop County the result of non-cooperation of the doctors in that county?

Mr. Jaureguy: Object to that as a leading question and also—

The Court: Sustained.

Mr. Jaureguy: —calling for a conclusion of the witness.

The Court: Sustained on the first ground.

Mr. Marcus:

Q. Mr. Brunkow, what was the occasion for setting up that method of doing business in Clatsop County? A. Our subscribers became uneasy and threatened to cancel the accounts unless we could get some cash down to them so that they could receive their care from the doctors that they chose to present themselves to.

Mr. Marcus:

Q. Mr. Brunkow, what has been the situation as to Columbia County? A. Columbia County until a year ago was out of our picture. We lost all the business in 1942, I think it was, because of the doctors' boycott, and, after a great deal of assistance and constant effort on the part of our Association, we were able to get the unions down there to give it another try.

Q. What has been the situation in Douglas County? A. What is a town in Douglas, primarily? That is Roseburg, isn't it? You don't know?

196 Mr. Jaureguy: Yes, that is Roseburg.

Mr. Marcus: Yes. A. In the Roseburg area we managed to salvage a few gyppos. We lost all our friends who moved into the Roseburg area from the northern part of the state. We had to establish one or two cash funds down there, and then in one—in another instance the employer guaranteed all bills himself, and we have still left two accounts.

Q. In the Roseburg area? A. I will modify that and say that there may be a few gyppos in the outlying districts.

Q. What do you mean by these terms, that term? A. "Gyppo" is a man that has a truck and a cat who hires three or four men, and they are out in the woods, bringing in logs to the operators.

Q. What has been the situation in Jackson County with respect to doctors cooperating with the Association? A. By the help of the employer, who has told us he would help us fight this thing as it was a matter of principle with him, we salvaged our one account.

The Court: Which account?

A. California-Oregon Power Company.

The Court: Who told you that?

A. Mr. Bullis.

Mr. Marcus:

Q. Who is Mr. Bullis? A. Mr. Bullis has charge
197 of the insurance. He is an office man. He has been there in Medford for many years.

Q. Is he connected with that company? A. Yes.

Q. What has been the situation with respect to doctors cooperating with the Association in Lane County? A. Lane County is Eugene. We have one barber down there who took dues for a half a dozen of his friends and acted as a

clearing house for us, and we had one woodworking outfit. That is, so far, the extent of our business there.

Q. What has been the situation in Marion County? A. In Marion County, by the help of the employers, we were able to save two canneries, and we picked up a cannery down there last year. All our business in Marion County—Marion and Polk Counties, I think; they are both right together.

Q. I was going to ask you about Polk County. A. Polk County has been very fine. We have some very fine business down there.

Q. Multnomah County? A. We have a reasonable amount of business in Multnomah County. Some accounts we have had here for twenty years.

Q. But the question is: What has been the situation with respect to doctors cooperating with the Association? A. The same old stuff. A part of them will and part of them won't.

198 Q. Is that true with respect to the other counties you just told us about? A. Some of them will cooperate, but in Multnomah County there is enough there you will find some of them will do anything.

Q. Take Polk County, again. Is Salem in that county? A. That is in Marion County.

Q. What has the situation been in Salem? A. In Salem we had two canneries, and all these bills were presented to the subscribers as private patients and a doctor charged whatever he felt his services would call for, and we were able to save that ourselves, for our saleman, John Caughell, knew all the people in Salem and watched over them daily, practically every day.

Q. In areas where doctors have received tickets of the Association, has the Association had occasion to cause cash accounts to be opened? A. Well, in four or five or a half-dozen areas, yes. I don't recall exactly, but we do have cash funds.

Q. Could you describe briefly the use that these cash funds are put to? A. Well, for instance, in Roseburg, in order to retain our business we made available an amount of cash and gave either the union member or the employer the right to pay any bill that came in, whether it was itemized, whether it was diagnosed; so long as the man was under our coverage for the period covered on the
199 statement we paid his bill—he paid his bill, our agent in the mill under our contract.

Q. Do you consider that an efficient way of doing business? A. No, sir; it is highly inefficient.

Q. Do you know whether some of your employer-sub-

scribers designate persons in their employ to collect medical bills and send them to you and otherwise service these accounts? A. Yes, that is a well-known fact.

Q. Is that more true in areas where doctors refuse to accept tickets than in areas where they do accept tickets? A. That is right.

Q. Do you know in some areas where doctors refuse to accept tickets some of your employer accounts pay the doctor bills for their employees and then contact the Association to receive payment therefor? A. Yes.

Q. Mr. Brunkow, does the Association normally require an itemized statement from a doctor before it pays a medical bill? A. Yes.

Q. For one of its subscribers? A. Yes.

Q. Did you answer "Yes"? A. Yes.

Q. In the case of doctors who do not accept Association tickets do you have more difficulty getting such statements than in cases where doctors do accept such tickets?

200 A. Generally speaking, yes, for the reason that a doctor who won't bill us in the first place is not interesting in furnishing any information to anyone.

Q. When a doctor does not accept an Association ticket, is there normally more of a delay by the Association in making payment for medical services under its contract than in a case where the doctor does accept the ticket? A. Yes, for without any diagnosis we are under no more obligation to pay for what we don't know about than anybody else is. We could run them through, but then we would subject ourselves to criticism, as we have been criticized, by the Insurance Commissioner.

Q. Do you consider that such delays and difficulties arising from doctors not accepting Association tickets or its checks, in making payment for medical services, impairs the Association's ability to compete with the Oregon Physicians' Service? A. Yes. A patient does not care whether we can pay it or whether we cannot, but the delay there throws a cog in it.

Q. Has the Association received communications from subscribers to the effect that because of difficulties with doctors not accepting Association tickets they were canceling their contracts?

Mr. Jaureguy: Objected to as not the best evidence.

The Court: Answer.

A. We have. Half of your cabinet is full of that over there.

Mr. Marcus:

201 Q. Have a number of such accounts been canceled, in fact? A. Yes.

Q. Would you say more than ten such accounts have been canceled? A. Yes.

Q. Does the Association mail prepaid medical care policies of the Association to subscribers resident outside of Oregon? A. Yes.

Q. Does the Association supply concerns having policies for their employees with the Association with medical or first-aid supplies? A. Yes.

Mr. Jaureguy: I didn't get that question.

Mr. Marcus: The question, Mr. Jaureguy, is whether the Association supplies concerns outside of the state which have policies with the Association with medical supplies and first-aid supplies.

Q. Do you mail such supplies to concerns outside of the state when they take prepaid medical care policies from the Association? A. Yes.

Q. Are those supplies replenished from time to time by the Association? A. Yes.

202 Q. Does the Association from time to time cause medical supplies and equipment to be sent to non-resident members of the Association or doctors treating such members outside of the state? A. Yes.

Q. Does the Association pay for and, in some instances, supply ambulance service for its subscribers? A. Yes.

Q. Does that include, from time to time, transportation between Oregon and Washington and between Oregon and California? A. Yes.

Q. Mr. Brunkow, do you know whether Dr. Rafferty of Astoria accepts tickets from the Association? A. I have seen a few coming in lately. I hesitate to embarrass him. I know that any doctor who sends us tickets knows that the Industrial will not disclose that; but you asked me a question, and that is my answer.

Q. I show you Exhibit 579, which purports to be a letter written by Mr. Perkin, to Dr. Rafferty, and ask you to look at it. It is a letter to Dr. Rafferty, asking Dr. Rafferty to accept your tickets. I will ask you whether you would be able to recall at that time the doctor was accepting your tickets? A. No, at that time he was not.

Q. I show you Exhibits marked 580 to 587, and ask you what your understanding is of those documents? A.

203 This is a whole file built up in connection with one of our subscribers who went to her doctor here in

Portland for care and, as she left his office, asked that he give her an itemized bill that she could present to her insurance company. Those are her terms—

Mr. Jaureguy: Object to that as purely hearsay and inadmissible.

The Court: He may answer.

A. And that he refused to give her any information.

Mr. Jaureguy: I didn't understand whether your Honor sustained the objection or not.

The Court: No. Proceed.

Mr. Marcus:

Q. Did you yourself have the conversation with the person you have mentioned? A. Several.

The Court: Mr. Jaureguy, so that we may have something of an understanding between us, not that I expect you to agree with me, the Federal Records Act takes the lid clear off about admissibility of files. As to what their weight is, that is another question.

Mr. Jaureguy: I certainly disagree with your Honor, in view of the decision of the Supreme Court.

The Court: I expected you would, because you taught evidence and I have just been a student of it here for ten or twelve years.

Mr. Jaureguy: Most of my time was spent learn-
204 ing it, though.

The Court: I thought maybe that would establish a slight contact between us on the subject.

Mr. Jaureguy: That is right, but my objection, when I made it, was not to the exhibit. It was to the witness giving testimony on something which obviously he did not know.

The Court: He just said it is a certain file from his office.

Mr. Marcus: The reason for this question, if your Honor please,—

The Court: Don't give any reason.

Mr. Marcus: Your Honor, I would like to explain.

The Court: Why? It is all settled. You have won. You may talk yourself out of something.

Mr. Jaureguy: With that understanding, that that is what he said, I will object on the ground it is not the best evidence and a conclusion of the witness.

The Court: All right. Overruled.

Mr. Marcus:

Q. Go ahead, Mr. Brunkow. A. This lady called us several times after she had sent us a statement that she had received from her doctor, and she said, "What am I going to do? I want my money back. I paid the doctor." So, I said, "Will you give me just enough so I can put the information down on this bill to satisfy the Insurance Commissioner, and we will go ahead and send you
205 a check, but we would like to have it from the doctor." She tried once more, so she told me, and was emphatically denied the right to get any information.

The Court: Wait a minute. That is what she told you?

A. That is right.

The Court: You can't testify to that.

A. I can't testify to that?

The Court: No. That is stricken. You can't tell anything she told you, where she told what somebody else told her.

A. The upshot of the thing was that we paid her without any dope.

Mr. Marcus:

Q. Do these documents record that? A. That is right.

Mr. Marcus: I might say at this point, your Honor, the reason I have been asking these questions is that some of these documents are meaningless. I can't understand them and I am sure your Honor could not.

The Court: I might be able to. I don't know.

Mr. Jaureguy: I wonder if I could see these documents after you are through with them.

Mr. Marcus: I want to ask a couple more questions.

Mr. Jaureguy: Yes.

A. If you have any trouble interpreting them, I might help you; but when I talk to someone on the phone and make notations, I don't think anybody else is ever going to
206 read it.

Mr. Jaureguy: You and I are alike in that respect.

Mr. Marcus:

Q. I show you Exhibit 587 again, and ask you if you know who placed the notation below the signature on that

document? A. Yes, J. Neil, one of our clerks placed that on there at my request.

Q. I show you Exhibit 519, and ask whether, after that exhibit was received, the Association lost the account of the Hotel Jackson? A. That is right. We lost it.

Q. I show you Exhibit 631 and ask you whether, after this letter was received, you lost the account of the First National Bank of Eugene? A. That is right. We did.

Q. I show you a document marked Exhibit 638 and ask whether you know whose signature is on that document? A. That is Al Walsh, one of our salesmen.

Q. Is that a report made by him? A. His reports on several accounts that we had trouble with.

207 Mr. Marcus:

Q. Mr. Brunkow, I show you Exhibit 639 and ask whether after the Association received this letter it lost the account of V.K.V. Lumber Co.? A. Yes, we lost that.

The Court: Can't you give me a whole handful and let him answer all at once?

Mr. Marcus: We only have a few other ones, your Honor.

Q. I show you Exhibit 640 and ask whether after receiving this document the Association lost the account of Lichty piling Company? A. Yes, that is another one we lost.

Q. Whose signature is that on the bottom of the document, if you know? A. It is Al Walsh. He covered that territory and tried to save this account.

Q. Is there not the name of Mulligan or Milligan there? A. That is right. Joe Mulligan was our sales manager. He acknowledged the letter and pointed out—

The Court: You don't need to tell what he pointed out.

Mr. Marcus:

Q. I show you Exhibit 642 and ask you whether you know who M. Bittner is, whose signature appears at the bottom of this document. A. She was our claims manager.

208 Q. Is there some writing on the left side of the second page of that exhibit? A. There is a notation by the man who handled our first aid work at the St. Helens Pulp that the doctors would not furnish itemized statements, and he returned the statements to us.

Q. I show you Exhibit 651 and ask whether the account of Todd Building Company was cancelled subsequent to receiving this letter? A. The letter was received in May of 1946. Our man went down and they said they would give it another whirl, and they stayed with us until the anniversary date of the contract, and we lost it some five months late.

Q. Mr. Brunkow, I show you Exhibit 652 and ask first that you read that exhibit to yourself and ask whether prior to the date of the letter the Winlock Handle Company was one of the Association's accounts? A. I can't answer that. I don't recall.

Q. I see. Well, who wrote the notice that appears on that document? A. Mr. Kirk's stenographer.

Q. I show you a document, Exhibit 654, which purports to be a letter from the office manager of the Brookfield Company, and I call your attention particularly to the first sentence in that letter. Do you know what is meant by the reference to "the present situation", which appears in the first sentence in that letter? A. The same
209 old doctor boycott.

Q. Was that account lost? A. Yes.

Q. I show you Exhibit 659 and ask whether, after receiving this letter the Industrial Hospital Association lost the account of the Laskey Logging Company? A. Yes, we lost that one.

Q. Mr. Brunkow, I show you an exhibit marked 1249 and ask whether you know who W. L. Harris is, whose name appears at the bottom of that document? A. Mr. Harris is a very aggressive CIO Business Agent in Southern Oregon.

Q. Mr. Brunkow, I show you a folder of exhibits marked 1669 and 1673 and ask you whether they are typical of the correspondence your Association has with non-resident subscribers and doctors?

Mr. Jaureguy: I object to that as calling for a conclusion of the witness.

The Court: Overruled. If it will take you a lot of time to read them, do it at recess. If you can run through it quickly and answer the question, that will be all right. You have probably looked through it just lately, anyhow?

A. That is right. It is routine. It is routine bills.

Mr. Marcus:

Q. Would that be true of the exhibits marked 1101 to 1105? A. Yes, the usual run-of-the-mill.

210 Q. I show you Exhibit 88, which appears to be one of your contracts, and ask whether you can state the approximate years during which this contract was in existence? A. This form was in effect, I would say, around '42 and '43.

Q. I show you Exhibit 89, which purports to be another contract of the Association, and ask you to state, if you know, the approximate period of time during which that contract was being used by the Association. A. This is a more recent contract, one that has been used, I would say, up until the last three or four months.

Q. I show you Exhibit 91 and ask whether this is a type of ticket of the Industrial Hospital Association. Perhaps your Honor might like to take a look at it.

The Court: I have seen it.

Mr. Marcus: You have seen it.

A. Yes, this was a ticket that we had in use.

Q. During about what period, would you say? A. Oh, '44-'45.

Q. Mr. Brunkow, I have before me Exhibit 100, which appears to be one of the Association's tickets: That ticket contains the following statement: "If the physician you have selected does not care to accept the ticket, your proper procedure is to obtain from him an itemized statement of his services to you, with diagnosis of condition treated, and send it to the Association's home office in Port-

211 land. The Association will make refund to you on the basis of its established schedule of fees."

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212 Mr. Marcus:

Q. Can you tell us the occasion for those two sentences appearing on this ticket? A. Well, that was to help smooth out the rough spots when the doctors began to refuse to take the tickets, and our people wondered if their coverage was in jeopardy for the reason that the doctor would not longer accept that ticket. So we then developed that to assure our members that their coverage was in no way affected, and we continued to do that to knock out the rough spots. We now have—many doctors then began to say, "Well, I have got to have authority, an authorization from you." So we have now included that.

Q. Mr. Brunkow, I show you this exhibit and ask you whether you can recall the period during which this ticket has been used by the Association. A. Well, there are a lot of those still out. It is a very recent form.

Mr. Marcus: That is all.

Cross Examination

By Mr. Jaureguy:

Q. You were shown this morning, Mr. Brunkow, Pre-Trial Exhibit No. 530, which was a letter written in 1939 by Will Kirk to California-Oregon Power Company, in which it was stated that the Industrial Hospital Association has received letters from certain doctors stating they would not take tickets, and the doctors named were Hayes, Drummond, Lemery, Durno, Thayer, Kresse, and Findley.

213 A. Yes.

Q. You said that you didn't know about a couple of them, but the rest of them continued not to take tickets. Do you mean to say that from 1939 to the present time those that you named were not taking tickets? A. Those since I have been with the organization have submitted statements for refunds.

Q. You say they have submitted statements for refunds? A. That is right.

Q. The doctors? A. That is right. They have submitted statements to their patients.

Q. How long since you have been with the organization? A. Five years.

Q. Five years? A. That is right.

Q. So you are not testifying to what happened between 1939 and 1944? A. That is right.

Mr. Jaureguy: I want to show you here a document which I would like to have marked with a Pre-Trial exhibit number.

(Photostatic copy of letter from Jackson County Medical Society to California-Oregon Power Company, undated, was thereupon marked Defendants' Exhibit 1854 for identification.)

214

Mr. Marcus: Your Honor, I would like to make this clear: We have not yet seen any of the defendants' documents. They have seen all of ours, or at least have had the opportunity to.

Mr. Jaureguy: Your Honor, they have seen this one, because it is a photostat that they took, and they have a

photostatic copy of it. But they have not put a pre-trial number on it, and that is why I am putting it in as mine.

Q. This is not quite up to the usual standard of FBI photostats, but I think you can read it. I will ask you if that letter was ever called to your attention. A. No.

Q. That letter is also a letter to the California-Oregon Power Company, by the Jackson County Medical Society this time. A. This is the first time I ever saw it.

Q. Then you don't know that the doctors of Jackson County—this letter is not dated, but in 1941, about September, they complained that their names were not on the list of the Industrial and wanted all their names on the list. You didn't know that before? A. Not until yesterday when you mentioned it.

Q. This letter contains the names of those who you say are not now taking tickets? A. Yes, I imagine so.

Q. So you don't know whether these doctors that I
215 named a few moments ago took tickets between 1941 and 1944? A. No.

Q. Do you know of any doctors either on that list or on this other list, Exhibit 1853, this handwritten list—do you know if any of those doctors took tickets between 1940 and 1944? A. No.

Q. You don't know? A. I have no knowledge.

Q. So your testimony today is only with respect to what doctors have and have not taken tickets since 1944? A. Since I came with the organization.

Q. And that was in 1944? A. That is right.

Q. This document that you identified, Exhibit 1853, has written on the top of it, "Doctors who we have evidence of refusing tickets other than IHA and who Brunkow says refused IHA also." That is not your writing, is it? A. No, that is not my writing.

Q. You were just testifying to the names, but not what was on the top, when you testified that these doctors did not take your tickets? A. That is right.

Q. You were just referring to the doctors? A. That is right.

Q. You were not referring to whether they took National or Prudential or anything else? A. No, I was just
216 concerned with the IHA.

Q. As I understand it, you are not sure whether this is a complete list of doctors, this 1853, who do not take your tickets? A. That is right.

Q. Do you know whether any of these doctors here took

your tickets two years ago? A. They are an unpredictable lot, and I would be surprised if some of those had not sometime or other slipped in a ticket. It is, however, their practice to present their statements to their patients.

Q. Are you talking now about these doctors all the time from 1944 to date, or are you talking about it now or a year ago or in what time? A. I am talking about the whole period.

Q. You are talking about the whole period. In other words, during this period of five years it has been the general practice of these doctors to submit their statements to their patients but sometimes, as you say, they have slipped in a ticket to you? A. That is right.

Q. You can't say for certain whether this is a complete list? A. Why, no, it is not a complete list of all the doctors who have refused our tickets.

Q. Do you know whether this is a complete list of
217 the doctors who regularly refuse your tickets? A. No, it is not a complete list of those who regularly refuse tickets.

Q. But you don't know how many more there are? A. No.

Q. You tried to get the names of all of them, didn't you? A. No.

Q. Oh, you didn't. Now, during the time you have been there, have there been doctors who have changed their practices? A. Yes.

Q. That is, when you went there they were not taking tickets, and then later they started taking tickets, or were taking tickets and then stopped taking tickets? A. Yes.

Q. How frequent is that? A. You mean that they fluctuate?

Q. Yes. A. I have no way of knowing.

Q. You can tell us about how often that happens, how often some doctor that has not been taking tickets suddenly starts in? A. Why, I have no way of determining that.

Q. Would you say there were as many who have fluctuated in that four-year period as there are on this list that you have identified here, Exhibit 1853? A.
218 Say that again slower, I can't get ahold of it.

Q. Yes, this is a little complicated for me, too. That is, the fluctuating doctors, the doctors who since you went there in 1944 have changed their practice at least once, one or more times, either from taking tickets and then refusing to take tickets, or from refusing to take

tickets to taking tickets, whether that list is probably as many as there are names on this Exhibit 1853? A. I don't have any idea. If I had an idea, I would be glad to give it to you.

Q. Oh, I understand. I understand. A. Let me say this: That I think that probably within the last year there are a great many more doctors who do recognize our existence.

Q. Recognize your existence, you say? A. That is right.

Q. They have always recognized you there, haven't they? A. In so far as we are concerned, they have not.

Q. Oh, you mean that they have dealt with the patients and not with you in any way? A. That is right. But they have dealt with the patients, recognizing that there is every likelihood that they will get some money back from the Industrial Hospital Association, for there are many doctors who have looked to their patients solely
219 for payment, and have not considered the possibility of any insurance company or prepaid plan being involved. But lately there have been more who have recognized that their people are under the protection of somebody and ask if they are under somebody.

Q. You say "lately", what do you mean by "lately"? A. I would say, within the last six months or a year.

Q. Now, you made a pretty exhaustive search as to the doctors who do not take tickets. Have you made a survey of the doctors who do take tickets? A. We have made a more exhaustive search of those who did take tickets.

Q. How many doctors, then, would you say do take tickets? A. As I said before, it is an unpredictable group you are dealing with. I made a little survey for my own personal information. It was never typed. I have the cards. We found that there was roughly—

Mr. Marcus: Your Honor, before the witness completes that answer, I would like to register our objection again on the ground of irrelevancy.

The Court: Overruled.

A. I don't recall—yesterday you made mention of the fact that there were 1200 doctors who cooperated. I thought it was 1400.

Q. Fourteen hundred doctors? A. Fourteen hun-
220 dred. That included M.D.'s, dentists, osteopaths, chiropractors, chiropodists, optometrists, naturopaths, in Oregon, Washington and Idaho, wherever in the United States our people were for care.

Q. How many of that would include M.D.'s in Oregon? A. We didn't care whether they were an M.D. or not. We wanted to see how many we could get on our list. I have no idea.

Q. You haven't tried to get the number, then, in Oregon that take your tickets? A. We went through our check file and listed everybody who called himself a doctor.

Q. How many in your check file who called themselves doctors in Oregon take your tickets? A. We didn't pay any attention to whether they were in Oregon or Illinois.

Q. Well, aren't 95 per cent of your checks written to doctors in Oregon? A. Oh, I wouldn't say that. I have never made that type of study.

Q. Would you say 90 per cent? A. I will hesitate to say. I don't know.

Q. Didn't the FBI make a survey as to the number of your checks that went out? A. I understand they did.

Q. Would the number of doctors be fairly proportionate to the amount of cash that was paid out?
221 A. My idea would probably be as good as yours on that. I don't know.

Q. But anyway, when was this survey when you got this figure of 1400? A. About a year and a half ago.

Q. So that in the spring of 1948 there were 1400 professional men, including doctors who took your tickets? A. Who accepted at least one check direct from Industrial Hospital Association.

Q. At least one check direct? A. Yes.

Q. Usually if the doctor receives the check direct, he has sent in a ticket, isn't that true? A. I would say that less than 50 per cent of the statements submitted for payment either to the doctor or patient come with a ticket. A ticket is supposed to remove delay and red tape, but the principle of our coverage is not predicated on our receiving a ticket.

Q. Oh, yes. I don't know that you can answer this: The expression, "taking a ticket", has gotten to be kind of a general expression, meaning that when a patient comes to the doctor the doctor decides to send his bill to the Industrial. Isn't that about what it means? A. That is right. It has almost become a phobia with the working
222 people of Oregon; taking a ticket is the most important thing.

Q. At any rate, that is what it means. It doesn't necessarily mean that the doctor takes a ticket and puts it in his drawer or sends it to you? I mean when you speak

of taking tickets, isn't that what is generally meant? A. A check sent or taking a ticket would mean the same thing. Taking a ticket means rendering a man service under the procedure of remitting the bill—sending his bill to the Hospital Association.

Q. To you, yes. A. Yes.

Q. So that, generally speaking, when you send a check to a doctor it is because the doctor has taken the ticket under the meaning of that expression? A. That is right.

Q. There were 1400 of them since you have been there; is that it? A. Yes. That was within that one period.

Q. What is that? A. That was within a period beginning January, 1947, to about—oh, it slopped over into '48 several months.

Q. 1948. Well, the practitioners in all the other professions of the healing arts, dentists, chiropractors, osteopaths, naturopaths, and any of the rest of them; they
223 don't equal over 15 per cent of the whole, do they? A. I haven't any idea.

Q. You have a very restrictive dental coverage, haven't you? A. The industry has an essentially restrictive dental coverage.

Q. I am speaking particularly of the Industrial Hospital Association. A. I frankly feel it is fairly broad. I think it is too broad.

Q. Well, it may be. A. I will say the Industrial has a very broad dental coverage.

Q. Broad as compared to the rest. But at any rate, wouldn't you say that the total of the other professions in the healing arts who treat your members would not be over 15 per cent?

Mr. Marcus: I think, Mr. Jaureguy, you ought to first qualify Mr. Brunkow as an expert witness. I don't understand how he expects to elicit this type of answer—

Mr. Jaureguy: From this type of witness?

Mr. Marcus: —from that type of question. Your Honor, I regard this as calling for a conclusion and utterly irrelevant to this proceeding.

The Court: Overruled.

Mr. Jaureguy:

Q. I am not asking you to testify as to what they do, but I am just asking you from your looking over of these records, as you have when you made the survey, and look-

ing at the checks, you know if it was John Jones, D.O.,
224 which would be Doctor of— A. Osteopathy.

Q. Osteopathy. If it was M.D., Doctor of Medicine and so on? A. That is right.

Q. Wouldn't you say that of the checks that you have paid out to doctors 85 per cent have been to Doctors of Medicine and the rest to the others? A. We don't make any identifying marks on our checks.

Q. What would you say about the treatment of your members, whether 85 per cent of the treatment is by M.D.'s and the balance by osteopaths, chiropractors and dentists? A. I would like to think it was that high.

Q. So would I. A. Ours is primarily—it was designed to be a medical program.

Q. Don't you think that at least 85 per cent of the treatment is by M.D.'s? A. If I say Yes, it will have no meaning, for I have no way of determining. I will say the majority of our care is done by M.D.'s.

Q. Do you have any list that you have made up in connection with those 1400? A. No. We didn't want to embarrass any of our friends.

225 Q. So that is just in your head? A. Absolutely, —I wish it were.

Q. What? A. I wish it were.

Q. Where is it, then? A. It is right here.

Q. Oh. Would you let me see it? A. You mean the list? No, no. I made no list, because I was afraid it would get in the hands of somebody that would use it against our friends. I think that is why so many doctors on the q.t. bill us—

Q. That is what I say; it is just in your head; you remember it? A. No. I have my cards, but I have no list.

Q. You pointed to your pocket and said "it is here." A. I was saying that my feelings for not preparing a list—it is not from a logical basis, but from an emotional basis.

Q. We misunderstood each other. So you cannot, then aside from giving us the total number of 1400 that took tickets during the year 1947, give us an estimate that you think is reliable as to the number that take tickets in Oregon? A. Absolutely not.

Q. Did you tell Dr. Moore that there were 1200 doctors and dentists in Oregon that took your tickets? A. I didn't mention Oregon. I said, "Doctor, things look pretty
226 good. We have got 1400 doctors that have accepted at least one check from us this past year and a half."

Q. That looked pretty good? A. Yes.

Q. How did that compare with 1946? A. I have no idea.

Q. 1945? A. I have no idea.

Q. No idea whatever? A. No.

Q. So you don't know whether during the course of the years more doctors have been taking tickets or fewer of them? A. That is right.

Q. You can't tell us now whether there are more taking them now than when you went there? A. I see more names, new names on checks the last six months than I have before.

Q. But how does 1948 compare with when you went there? A. I would be surprised if we would not find a great many new names.

Q. Every year? A. Over last year.

Q. No, I meant, how does 1948 compare with when you first went there, whether there were not a lot of
227 doctors taking tickets in '48 that did not take them in '44? A. Oh, yes, I am proud to say there are more doctors that cooperate.

Q. Hasn't that been true since you went there, that there has been continuously a greater number of doctors that cooperate? A. There have been more doctors calling us as individuals and asking us for the fee schedule and bill blanks, but they come out with the same answer, "But for God's sake, don't put my name on any list."

Q. They don't want their names on a list. They will take care of patients, if the patients go to them, but they don't want their names on any list? A. We say, "We don't sell a doctor's list. We are selling a care program. We are paying for his care."

Q. So you don't publish a doctors' list? A. We have none.

Q. What is that? A. We have none.

Q. You have none, and, therefore, you don't publish any? A. We can't publish any.

Q. And you haven't for many years, have you? A. You are right.

Q. When this letter was written to the California-Oregon Power Company by the doctors of Jackson County listing the whole medical profession in Jackson County
228 and asking that their names be put on the list, I take it that meant a list that they had posted at the California-Oregon Power Company? A. That was prior to my time, and I can't say.

(Short recess)

Cross Examination (Continued)

By Mr. Jaureguy:

Q. Exhibit 100, which is what we have been calling the Industrial Hospital Association's ticket, that was started when did you say? A. All that business of free choice—I don't know. We have been constantly revising them. I said I thought that was on Form 44 and 45.

Q. Form 44 and 45, that you put in that the provision that if the physician does not care to accept the ticket the member is to obtain an itemized statement with the diagnosis of the condition treated, and send it to the Association's home office. A. Every time we have had it printed, we have changes in it.

Q. You talked of some exhibits here, I think 580 to 586, involving treatment by some Portland doctors where she could not get sufficient information to enable you properly to evaluate the account and know how much to pay. I show you Exhibit 585.

Part of that is typwritten and part of it is in pen and ink or pencil. I assume the words "Paid in Full" with the name of the doctor was put on by somebody else other than your office? A. I assume that it was, yes.

Q. But the other matters there— A. By our office.

230 Q. So, am I correct when I say that this bill indicates that the doctor rendered a statement to the patient showing that on September 10th there was an examination, a blood count and urinalysis? A. That is right.

Q. And the charge for this service was $20.00? A. Right.

Q. This shows that you reimbursed the patient for, how much for that? A. $4.50, which was under the provisions of the contract, and she knew her first call in its entirety was not covered.

Q. So the first call would include the examination? A. Whatever services were done.

Q. On the first call? A. On the first call.

Q. Then the blood count and urinalysis is what you pay $4.50 for? A. That is right.

Q. So if the doctor charged $5.00 for the first call and then you pay $4.50 for $15.00 of services— A. If he had charged her a hundred dollars, she still got $4.50.

Q. That is right. On September 19 there was an office visit, diagnosis, instructions and so forth, and on the 19th there was another office visit for her daughter, and

231 for those two office visits the charge was $5.00, and you reimbursed her how much? A. Nothing. Her daughter was not under coverage.

Q. I am covering both items, you know, September 19th, two items. A. We paid her—the total charge was $5.00 and we paid her $2.50, and her daughter was not covered. We paid for the lady's office call.

Q. Then, on December 17th it shows office visits for your member, I take it? A. Yes.

Q. The lady named there is your member? A. Yes.

Q. The charge was $3.00 and you reimbursed her for $2.50. A. $2.50.

Q. $2.50? A. Yes.

Q. Then, December 27th, there was a basal metabolism test. These words "Receipt Attached," did you put them on there, or your office? A. It looks like our girl's writing.

Q. The charge for that was $2.50. Did you reimburse her anything for that? A. Nothing.

Q. The reason for that was that she was not covered? A. Basal metabolism tests are covered.

232 The Court: You will have to talk up so Mr. Marcus can hear you.

A. I just said basals were covered under our program, and why that was not circled I don't know.

Mr. Jaureguy:

Q. But, at any rate, there is one item of one office visit that was not covered and one office visit that you eliminated because it is the first office visit? A. One office visit was eliminated because she is not under our insurance.

Q. That is what I say. Then, another office visit was eliminated because you do not pay for the first call? A. That is right.

Q. The total bill of the doctors was $30.50, and the patient was reimbursed $9.50. A. Let's see our check. The check was $17.00.

Q. $17.00, I take it that includes another one that I have not gone over. A. It is kind of hard to tell that. I don't know what is on it.

Q. In all, there was a $28.00 bill and you allowed $12.50. A. Yes.

Q. $12.50 and $9.00 is something over $17.00, but, anyway, $17.00 is what you paid? A. That is right.

Q. If these doctors had accepted your tickets and sent you bills—say that they eliminated, say, $10.00 from
233 those bills and sent you a bill for $48.50, then I take it they would have been reimbursed $17.00? A. That all depends on the information that they would have

given us. Those are based on what we get from the statements.

Q. If they had given you different information, would you have paid more for the blood count and urinalysis? A. Our fee schedule is flexible, and if he would have told us what he did for his patient and the work that was involved, we would pay.

Q. The last printed fee schedule, does it appear on its face that it is flexible? A. Yes. I think you will find in there that it says if there are extenuating circumstances and they will contact the Association we would be happy to cooperate.

Q. We will look at it. I won't take the time now. A. Be sure to get our last one.

Q. When was the last one put into effect? A. It has been modified off and on. I think the last one was about 1948.

Q. Before that was it flexible on its face? A. It was the 1946 printing which referred to its flexibility. The others, prior to that time, I don't know anything about.

Q. Could you give me an estimate of how many accounts you have had at any one time? A. How many 234 accounts?

Q. Yes. A. When you say "account" you mean with the employer?

Q. That is right.

Mr. Marcus: I rise to object to the question on the ground of irrelevance, your Honor. What does it matter, as far as this case is concerned, as far as the activities of the defendants are concerned, as to the number of accounts that the Association has?

The Court: Are you asking me a question?

Mr. Marcus: Yes. I am objecting to the question on the grounds just stated,

The Court: Put it in that form, then. Don't ask me questions. I will answer all the questions in the case as best I can at the end of the case.

Mr. Marcus: Well, your Honor, the objection is to the relevance of the question.

The Court: Overruled.

A. Yes, we can count the number of accounts we have in effect.

Mr. Jaureguy:

Q. About how many do you have? A. 500.

Q. 500? A. About 500.

Q. Does that vary from year to year, as it must, I suppose? A. Varies from day to day.

Q. Varies from day to day? A. As to the effec-
235 tiveness of our salesmen.

The Court: How many members do you have?

A. I would say in Oregon between 25,000 and 30,000. That varies greatly from day to day.

The Court: That is shown in your report to the Insurance Commissioner?

A. That is right.

The Court: Also your income?

A. The income is shown to the Insurance Commissioner. The number of members is not.

The Court: Why is that?

A. You can't determine it.

Mr. Jaureguy:

Q. Is it also because the printed form does not ask for it? A. You couldn't do it even if you wanted to. A cannery may put on a thousand people for the pear pack.

The Court: Are your profits also shown in your report to the Insurance Commission?

A. That is right, and to the Income Tax Bureau.

The Court: I knew that without your telling me.

Mr. Jaureguy:

Q. In 1948, just to use that as an illustration, if your average number of accounts was 500, about how much would it have varied from the peak of the season to the slack season? A. I don't know.

236 Q. I suppose in the summer season you have more than you do in the winter? A. That is right. The canneries are going and the woods are going.

Q. I suppose since you have been there the total number of accounts you have had probably would run a couple of thousand or more? A. Oh, no.

Q. I didn't know. I should have said, how much would they have run, because I don't know. A. One does not look for much turnover of these accounts. There is not much turnover.

Q. There is not?

The Court: You have a very profitable business, haven't you, Mr. Brunkow?

A. It used to be.

The Court: You mean it makes less money now than it used to make?

A. Yes.

The Court: What is your salary?

A. My salary?

The Court: Yes.

A. $750 a month.

The Court: Do you have any income besides that, any perquisite besides that?

237 A. Any what?

The Court: Do you have anything more, any extras besides that?

A. If we get a good year, then at Christmastime we look forward to something.

Mr. Jaureguy:

Q. What is Dr. Moore's salary?

Mr. Marcus: I object to that question. I don't see the relevance at all.

The Court: I do. Answer.

Mr. Jaureguy:

Q. What is Dr. Moore's salary? A. $1800 a month.

Q. How much? A. One thousand eight hundred a month.

Q. In addition to that, does he get paid for treating patients of the members of the Association? A. No. He has private practice, if he has any private practice any more.

Q. The corporation has paid large dividends in the past ten years? A. Depends on what you call large.

Q. Some years it has run as high as one hundred per cent? A. I understand it has.

Q. But not since you have been there? A. That is right.

Q. You gave your opinion of the number of ac-
238 counts that have been lost since you have been there by reason of the non-cooperation of the doctors. Do you remember that? A. Yes, that is right.

Q. Isn't the usual practice in the industries now, and for the last eight or ten years, that the members of the union have a meeting and vote as to whether they will take Industrial, National or OPS, or what they will take? A. It has become increasingly so; that is the procedure that is followed.

Q. Some of these accounts that you say you have lost on account of the activities of OPS have followed that procedure and the union elected as to which it wanted to give its business to? The men voted, I mean? A. That is right.

Q. So your conclusion that you lost them for this reason is based on what somebody told you, or was it based on the fact that you had reports in you districts that the doctors did not take tickets? A. That was the report given us as to the reason they were canceling their contracts.

Q. Given you by the employer or by the union? A. Both.

Q. You mean in some cases it was one and in some cases the other, or in some cases both of them together? A. That is right.

239 Q. In some cases the employer wrote and said that, and in some cases the union man said it? A. Yes.

Q. And in some cases both? A. That is right.

Q. So, is it your understanding when a man is in a union meeting and votes whether he wants Industrial, National or OPS, that every man would get up and give his reason for his vote? A. I have not been to any of these meetings where votes are held.

Q. Then you don't know whether they do that or not? A. All I have is what comes to the office.

Q. I beg your pardon? A. All I have is what comes to the office.

Q. So your opinion which you gave as to the number you have lost for this reason is based entirely on what has come to the office? A. Solely. I won't say "solely." They are based on letters that we have received and reports of the salesmen.

Q. All of these letters are in the file over here, are they not? A. Well,—

Q. I will put it this way: You, I take it, have not gone through this file, but all of these letters have been turned over to the Government in this case. A. All that
240 we had. I know the Government men found others that Mr. Kirk had filed away in the usual course of business.

Q. So, all you had and all Mr. Kirk had filed elsewhere, the Government has them? I mean, all the letters on which you have based your opinion as to the number of accounts that have been lost on account on non-cooperation of doctors. They have been turned over or gotten into the hands of the Government in this case? A. There are none that I know of that have not been turned over.

Q. Mr. Marcus questioned you about certain specific counties. What about the counties that he did not ask you about? A. Well, I think most of those counties will have certain—I know that some of those counties have some doctors who do cooperate. I don't know what county Lebanon or Sweet Home or Stayton are in. However, doctors, generally speaking, in small communities do cooperate.

Q. I think these towns are all in Marion County. A. They may be.

The Court: Not Lebanon.

Mr. Jaureguy: Not Lebanon, no.

The Court: And not Sweet Home.

Mr. Jaureguy: Linn County. Lebanon and Sweet Home are in Linn County. What is the other town?

The Court: Stayton.

241 A. Stayton.

Mr. Jaureguy: I won't say anything about that.

Q. They do cooperate; in the small towns, generally, they cooperate? A. That is right.

Q. In the larger towns, not so much? A. That is right.

Q. Pendleton, LaGrande, Baker— A. We don't have anything up in that area.

Q. Dr. Moore was mistaken, then? A. That is right, he was. We now have McNary Dam, which is on the Washington side, but those people usually funnel up into Washington.

Q. Klamath Falls? A. We have an account at Klamath Falls.

Q. Is that the same, California-Oregon Power Company? A. Yes.

Q. That is the account at both Klamath Falls and Medford? A. And Roseburg and Grants Pass.

Q. And waypoints? A. Yes.

Q. That account, the California-Oregon Power Company, for years has been the principal business of Industrial, both in Klamath Falls and Medford, hasn't it?

A. Since I have been with the organization, it has.

242 Q. You have a lot of doctors in Klamath Falls who take your tickets? A. There are some who, this past year, started to bill us.

Q. When did Larry Brown leave you? A. Larry Brown left us about—

Q. About two years ago? A. About a year and a half or two years ago.

Q. At that time didn't you have seventeen in Klamath Falls that you felt were cooperating with you? A. Who had accepted a check, at least a check. Again, that was out of the same survey that we had made.

Q. Seventeen in that place who, in 1947, accepted checks? A. Had accepted checks.

Q. And, presumptively, sent you in their bills? A. That is right.

Q. Naming over the other small towns—Gold Beach, Junction City— A. Junction City, no. We would be in wherever we could get in. We have not attempted to limit our activities to the Willamette Valley. If we find an account down at Malheur—

Q. I was thinking more of the attitude of the doctors. A. Oh.

Q. I understand from Dr. Moore—Of course, I understand he does not have contact with this like you do—that you do business in every town of any size in

243 Oregon. A. He is wrong.

Q. He is wrong on that? A. Yes.

Q. The Dalles? A. We have an account at The Dalles.

Q. Do they cooperate, the doctors? A. Yes.

Q. Arlington? A. No.

Q. You mean you do not have an account or that they do not cooperate? A. We have no account.

Q. You have no account there? A. No.

Q. I take it there are a lot of doctors in Oregon who, at least in the last five years, have never had occasion to determine whether or not they would take your tickets? A. That is true.

The Court: How many doctors are there in the state?